

19-6-101. Short title.

This part is known as the "Solid and Hazardous Waste Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-102. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

(3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.

(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:

(i) receives waste for recycling;

(ii) receives waste to be used as fuel, in compliance with federal and state requirements;

or

(iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) "Construction waste or demolition waste":

(a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and

(b) does not include: asbestos; contaminated soils or tanks resulting from remediation or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or potentially hazardous materials.

(5) "Demolition waste" has the same meaning as the definition of construction waste in this section.

(6) "Director" means the director of the Division of Solid and Hazardous Waste.

(7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(8) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

(9) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.

(10) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial

present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(11) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

(12) "Household waste" means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(13) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(14) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(15) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.

(16) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

(17) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan or approval under Section 19-6-108, including:

(a) a plan to own, construct, or operate a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

(b) a closure plan;

(c) a modification plan; or

(d) an approval that the director is authorized to issue.

(18) "Permittee" means a person who is obligated under an operation plan.

(19) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

(b) "Solid waste" does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

(i) certain large volume wastes, such as inert construction debris used as fill material;

(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;

(iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste

generated primarily from the combustion of coal or other fossil fuels;

(iv) solid wastes from the extraction, beneficiation, and processing of ores and minerals;

or

(v) cement kiln dust.

(20) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

(21) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

(22) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

(23) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

Amended by Chapter 360, 2012 General Session

19-6-102.1. Treatment and disposal -- Exclusions.

As used in Subsections 19-6-104 (1)(e)(ii)(B), 19-6-108(3)(b) and (3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment and disposal" specifically excludes the recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road construction, railway ballast, construction fill, aggregate, and other construction-related purposes.

Amended by Chapter 360, 2012 General Session

19-6-102.6. Legislative participation in landfill siting disputes.

(1) (a) Upon the Legislature's receipt of a written request by a county governing body or a member of the Legislature whose district is involved in a landfill siting dispute, the president of the Senate and the speaker of the House shall appoint a committee as described under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable location for a municipal landfill if there is a dispute between two or more counties regarding the proposed site of a municipal landfill.

(b) The president and the speaker shall consult with the legislators appointed under this subsection regarding their appointment of members of the committee under Subsection (2), and volunteers under Subsection (3).

(2) The committee shall consist of the following members, appointed jointly by the president and the speaker:

(a) two members from the Senate:

(i) one member from the county where the proposed landfill site is located; and

(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one senator from one of those counties;

- (b) two members from the House:
 - (i) one member from the county where the proposed landfill site is located; and
 - (ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one representative from one of those counties;
- (c) one individual whose current principal residence is within a community located within 20 miles of any exterior boundary of the proposed landfill site, but if no community is located within 20 miles of the community, then an individual whose current residence is in the community nearest the proposed landfill site;
- (d) two resident citizens from the county where the proposed landfill site is located; and
- (e) three resident citizens from the other county involved in the dispute, but if more than one other county is involved, still only three citizen representatives from those counties.
- (3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be individuals who agree to assist, as requested, the committee members who represent the interests of the county where the proposed landfill site is located.
- (4) (a) Funding and staffing for the committee shall be provided jointly and equally by the Senate and the House.
- (b) The Department of Environmental Quality shall, at the request of the committee and as funds are available within the department's existing budget, provide support in arranging for committee hearings to receive public input and secretarial staff to make a record of those hearings.
- (5) The committee shall:
 - (a) appoint a chair from among its members; and
 - (b) meet as necessary, but not less often than once per month, until its work is completed.
- (6) The committee shall report in writing the results of its work and any recommendations it may have for legislative action to the interim committees of the Legislature as directed by the Legislative Management Committee.
- (7) (a) All action by the division, the director, or the division board of the Department of Environmental Quality regarding any proposed municipal landfill site, regarding which a request has been submitted under Subsection (1), is tolled for one year from the date the request is submitted, or until the committee completes its work under this section, whichever occurs first. This Subsection (7) also tolls the time limits imposed by Subsection 19-6-108(13).
- (b) This Subsection (7) applies to any proposed landfill site regarding which the department has not granted final approval on or before March 21, 1995.
- (c) As used in this Subsection (7), "final approval" means final agency action taken after conclusion of proceedings under Sections 63G-4-207 through 63G-4-405.
- (8) This section does not apply to a municipal solid waste facility that is, on or before March 23, 1994:
 - (a) operating under an existing permit or the renewal of an existing permit issued by the local health department or other authority granted by the Department of Environmental Quality; or
 - (b) operating under the approval of the local health department, regardless of whether a formal permit has been issued.

Amended by Chapter 360, 2012 General Session

19-6-103. Solid and Hazardous Waste Control Board -- Members -- Terms -- Organization -- Meetings -- Per diem and expenses.

- (1) The board consists of the following nine members:
 - (a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
 - (i) the executive director; or
 - (ii) an employee of the department designated by the executive director; and
 - (b) the following eight voting members appointed by the governor with the consent of the Senate:
 - (i) one representative who:
 - (A) is not connected with industry;
 - (B) is an expert in waste management matters; and
 - (C) is a Utah-licensed professional engineer;
 - (ii) two government representatives who do not represent the federal government;
 - (iii) one representative from the manufacturing, mining, or fuel industry;
 - (iv) one representative from the private solid or hazardous waste disposal industry;
 - (v) one representative from the private hazardous waste recovery industry;
 - (vi) one representative from the public who represents:
 - (A) an environmental nongovernmental organization; or
 - (B) a nongovernmental organization that represents community interests and does not represent industry interests; and
 - (vii) one representative from the public who is trained and experienced in public health.
- (2) A member of the board shall:
 - (a) be knowledgeable about solid and hazardous waste matters as evidenced by a professional degree, a professional accreditation, or documented experience;
 - (b) be a resident of Utah;
 - (c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
 - (d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(i)(B).
- (3) No more than five of the appointed members may be from the same political party.
- (4) (a) Members shall be appointed for terms of four years each.
 - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
- (c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.
 - (ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.
- (5) Each member is eligible for reappointment.
- (6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.
- (7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations of the board and with the consent of the Senate.

(8) The board shall elect a chair and vice chair on or before April 1 of each year from its membership.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.

(b) Meetings shall be held on the call of the chair, the director, or any three of the members.

(11) Five members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

Amended by Chapter 360, 2012 General Session

19-6-104. Powers of board -- Creation of statewide solid waste management plan.

(1) The board shall:

(a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;

(b) order the director to:

(i) issue orders necessary to effectuate the provisions of this part and rules made under this part;

(ii) enforce the orders by administrative and judicial proceedings; or

(iii) initiate judicial proceedings to secure compliance with this part;

(c) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;

(d) meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste;

(e) (i) require any facility, including those listed in Subsection (1)(e)(ii), that is intended for disposing of nonhazardous solid waste or wastes listed in Subsection (1)(e)(ii)(B) to submit plans, specifications, and other information required by the board to the board prior to construction, modification, installation, or establishment of a facility to allow the board to determine whether the proposed construction, modification, installation, or establishment of the facility will be in accordance with rules made under this part;

(ii) facilities referred to in Subsection (1)(e)(i) include:

(A) any incinerator that is intended for disposing of nonhazardous solid waste; and

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; and

(f) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-6-107(3)(a) that requires a civil penalty of \$25,000 or more; and

(ii) approve or disapprove the settlement.

(2) The board may:

(a) (i) hold a hearing that is not an adjudicative proceeding; or

(ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;

or

(b) advise, consult, cooperate with, or provide technical assistance to other agencies of the state or federal government, other states, interstate agencies, or affected groups, political subdivisions, industries, or other persons in carrying out the purposes of this part.

(3) (a) The board shall establish a comprehensive statewide solid waste management plan by January 1, 1994.

(b) The plan shall:

(i) incorporate the solid waste management plans submitted by the counties;

(ii) provide an estimate of solid waste capacity needed in the state for the next 20 years;

(iii) assess the state's ability to minimize waste and recycle;

(iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste needs and existing capacity;

(v) evaluate facility siting, design, and operation;

(vi) review funding alternatives for solid waste management; and

(vii) address other solid waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

(c) The board shall consider the economic viability of solid waste management strategies prior to incorporating them into the plan and shall consider the needs of population centers.

(d) The board shall review and modify the comprehensive statewide solid waste management plan no less frequently than every five years.

(4) (a) The board shall determine the type of solid waste generated in the state and tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid waste management plan.

(b) The board shall review and modify the inventory no less frequently than once every five years.

(5) Subject to the limitations contained in Subsection 19-6-102(19)(b), the board shall establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

(6) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-6-107:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

(7) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 360, 2012 General Session

19-6-105. Rules of board.

(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) establishing minimum standards for protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of solid waste, including requirements for the approval by the director of plans for the construction, extension, operation, and closure of solid waste disposal sites;

(b) identifying wastes which are determined to be hazardous, including wastes designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Sec. 6921, et seq.;

(c) governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities, including requirements for keeping records, monitoring, submitting reports, and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;

(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;

(e) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review hazardous wastes operation plans;

(f) governing public hearings and participation under this part;

(g) establishing standards governing underground storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;

(i) defining closure plans as major or minor;

(j) defining modification plans as major or minor; and

(k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch, canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.

(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the wastes, and site specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to wastes:

(a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste

generated primarily from the combustion of coal or other fossil fuels; and

(c) cement kiln dust waste.

(3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

Amended by Chapter 360, 2012 General Session

19-6-106. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board makes for the purpose of the state administering a program under the federal Resource Conservation and Recovery Act and, to the extent the board may have jurisdiction, under the federal Comprehensive Environmental Response, Compensation and Liability Act, or the federal Emergency Planning and Community Right to Know Act of 1986, may be more stringent than the corresponding federal regulations which address the same circumstances. In making the rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purposes described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the conclusion.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-107. Director -- Appointment -- Powers.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) The director shall:

(a) carry out inspections pursuant to Section 19-6-109;

(b) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;

(c) develop programs for solid waste and hazardous waste management and control within the state;

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this part;

(e) subject to the provisions of this part, enforce rules made or revised by the board through the issuance of orders;

(f) review plans, specifications or other data relative to solid waste and hazardous waste control systems or any part of the systems as provided in this part;

(g) under the direction of the executive director, represent the state in all matters pertaining to interstate solid waste and hazardous waste management and control including, under the direction of the board, entering into interstate compacts and other similar agreements;

and

(h) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.

(3) The director may:

(a) subject to Subsection 19-6-104(1)(f), settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules adopted under this part;

(b) employ full-time employees necessary to carry out this part;

(c) as authorized by the board pursuant to the provisions of this part, authorize any employee or representative of the department to conduct inspections as permitted in this part;

(d) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to solid waste and hazardous waste management and control necessary for the discharge of duties assigned under this part;

(e) collect and disseminate information relating to solid waste and hazardous waste management control; and

(f) cooperate with any person in studies and research regarding solid waste and hazardous waste management and control.

Amended by Chapter 360, 2012 General Session

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990;

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(e) a submission of an operation plan to construct a facility, if previous approvals of the operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the director for an operation plan for that facility or site.

(ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the director information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The director may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the director for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the person receives:

(A) local government approval and the approval described in Subsection (3)(a);

(B) approval from the Legislature; and

(C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B), approval from the governor.

(ii) A facility referred to in Subsection (3)(c)(i) is:

(A) a commercial nonhazardous solid waste disposal facility;

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; or

(C) a commercial hazardous waste treatment, storage, or disposal facility.

(iii) The required approvals described in Subsection (3)(c)(i) for a facility described in

Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

(A) the governor's approval is received on or after May 10, 2011, and the facility is not operational within five years after the day on which the governor's approval is received; or

(B) the governor's approval is received before May 10, 2011, and the facility is not operational on or before May 10, 2016.

(iv) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to another person for five years after the day on which the governor's approval is received.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary of the board under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary of the board to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary of the board under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary of the board determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The director shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that the director cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The director shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The director shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the director shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the director shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the director shall issue a notice of completeness.

(ii) If the plan is determined by the director to be incomplete, the director shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The director shall review information submitted in response to a notice of deficiency

within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the director shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the director determines that the proposed plan, or any part of it, will not comply with applicable rules, the director shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the director determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) The director may not approve a proposed nonhazardous solid or hazardous waste operation plan unless the plan contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the director determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and

training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the director considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board;

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit;

(g) for a proposed operation plan submitted on or after July 1, 2013, for a new solid or hazardous waste facility other than a water treatment facility that treats, stores, or disposes site-generated solid or hazardous waste onsite, a traffic impact study that:

(i) takes into consideration the safety, operation, and condition of roadways serving the proposed facility; and

(ii) is reviewed and approved by the Department of Transportation or a local highway authority, whichever has jurisdiction over each road serving the proposed facility, with the cost of the review paid by the person who submits the proposed operation plan; and

(h) for a proposed operation plan submitted on or after July 1, 2013, for a new nonhazardous solid waste facility owned or operated by a local government, financial information that discloses all costs of establishing and operating the facility, including:

(i) land acquisition and leasing;

(ii) construction;

(iii) estimated annual operation;

(iv) equipment;

(v) ancillary structures;

(vi) roads;

(vii) transfer stations; and

(viii) using other operations that are not contiguous to the proposed facility but are necessary to support the facility's construction and operation.

(10) The director may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility;

and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the director in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The director may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the director determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The director shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary of the board on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the director, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the director.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Amended by Chapter 378, 2013 General Session

19-6-108.3. Director to issue written assurances, make determinations, and partition operation plans -- Board to make rules.

(1) Based upon risk to human health or the environment from potential exposure to hazardous waste, the director may:

(a) even if corrective action is incomplete, issue an enforceable written assurance to a person acquiring an interest in real property covered by an operation plan that the person to

whom the assurance is issued:

- (i) is not a permittee under the operation plan; and
- (ii) will not be subject to an enforcement action under this part for contamination that exists or for violations under this part that occurred before the person acquired the interest in the real property covered by the operation plan;

- (b) determine that corrective action to the real property covered by the operation plan is:

- (i) complete;
- (ii) incomplete;
- (iii) unnecessary with an environmental covenant; or
- (iv) unnecessary without an environmental covenant; and

- (c) partition from an operation plan a portion of real property subject to the operation plan after determining that corrective action for that portion of real property is:

- (i) complete;
- (ii) unnecessary with an environmental covenant; or
- (iii) unnecessary without an environmental covenant.

(2) If the director determines that an environmental covenant is necessary under Subsection (1)(b) or (c), the director shall require that the real property be subject to an environmental covenant according to Title 57, Chapter 25, Uniform Environmental Covenants Act.

(3) An assurance issued under Subsection (1) protects the person to whom the assurance is issued from any cost recovery and contribution action under state law.

(4) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may adopt rules to administer this section.

Amended by Chapter 360, 2012 General Session

19-6-108.5. Management of hazardous waste generated outside Utah.

(1) On and after July 1, 1992, any waste entering Utah for disposal or treatment, excluding incineration, that is classified by Utah as nonhazardous solid waste and by the state of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for each receiving facility or site, shall be treated according to the same treatment standards to which it would have been subject had it remained in the state where it originated. However, if those standards are less protective of human health or the environment than the treatment standards applicable under Utah law, the waste shall be treated in compliance with the Utah standards.

(2) The base volume provided in Subsection (1) for each receiving facility or site is the average of the annual quantities of nonhazardous solid waste that originated outside Utah and were received by the facility or site in calendar years 1990 and 1991.

(3) (a) The base volume for each receiving facility or site that has an operating plan approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of out-of-state nonhazardous waste the facility or site received during the 24 months following the date of initial receipt of nonhazardous waste originating outside Utah.

(b) The base determined under Subsection (3)(a) applies to the facility or site on and after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah received by the facility or site prior to this date.

Amended by Chapter 324, 2010 General Session

19-6-109. Inspections authorized.

Any duly authorized officer, employee, or representative of the director may, at any reasonable time and upon presentation of appropriate credentials, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of, and have access to and the right to copy any records relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of the board. Those persons referred to in this section may also inspect any waste and obtain waste samples, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator, or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

Amended by Chapter 360, 2012 General Session

19-6-111. Variances -- Requirements for application -- Procedure.

(1) (a) If the board determines that the application of, or compliance with, any requirements of this part would cause undue or unreasonable hardship to any person, it may issue a variance from any of those requirements.

(b) No variance may be granted except upon application for it.

(c) Immediately upon receipt of an application for a variance, the board shall give public notice of the application and provide an opportunity for a public hearing.

(d) A variance granted for more than one year shall contain a timetable for coming into compliance with this part and shall be conditioned on adherence to that timetable.

(2) (a) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance.

(b) No renewal may be granted except on application for it.

(c) Immediately upon receipt of an application for renewal, the board shall give public notice of the application and provide an opportunity for a public hearing.

(3) (a) The board may review any variance during the term for which it was granted.

(b) The procedure for review is the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.

(4) (a) Any variance or renewal exists at the discretion of the board and is not a right of the applicant or holder.

(b) However, any person adversely affected by the granting, denying, or revoking of any variance or renewal by the board may obtain judicial review of the board's decision by filing a petition in district court within 30 days from the date of notification of the decision.

(c) The decision of the board may not be overturned upon review unless the court finds that the actions of the board were arbitrary or capricious.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-112. Notice of violations -- Order for correction -- Civil action to enforce.

(1) Whenever the director determines that any person is in violation of any applicable approved hazardous wastes operation plan or solid waste plan, the requirements of this part, or any of the board's rules, the director may cause written notice of that violation to be served upon the alleged violator. The notice shall specify the provisions of the plan, this part or rule alleged to have been violated, and the facts alleged to constitute the violation.

(2) The director may:

(a) issue an order requiring that necessary corrective action be taken within a reasonable time; or

(b) request the attorney general or the county attorney in the county in which the violation is taking place to bring a civil action for injunctive relief and enforcement of this part.

(3) Pending promulgation of rules for corrective action under Section 19-6-105, the director may issue corrective action orders on a case-by-case basis, as necessary to carry out the purposes of this part.

Amended by Chapter 360, 2012 General Session

19-6-113. Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

(2) Any person who violates any order, plan, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than \$13,000 per day for each day of violation.

(3) On or after July 1, 1990, no person shall knowingly:

(a) transport or cause to be transported any hazardous waste identified or listed under this part to a facility that does not have a hazardous waste operation plan or permit under this part or RCRA;

(b) treat, store, or dispose of any hazardous waste identified or listed under this part:

(i) without having obtained a hazardous waste operation plan or permit as required by this part or RCRA;

(ii) in knowing violation of any material condition or requirement of a hazardous waste operation plan or permit; or

(iii) in knowing violation of any material condition or requirement of any rules or regulations under this part or RCRA;

(c) omit material information or make any false material statement or representation in any application, label, manifest, record, report, permit, operation plan, or other document filed, maintained, or used for purposes of compliance with this part or RCRA or any rules or regulations made under this part or RCRA; and

(d) transport or cause to be transported without a manifest any hazardous waste identified or listed under this part and required by rules or regulations made under this part or RCRA to be accompanied by a manifest.

(4) (a) (i) Any person who knowingly violates any provision of Subsection (3)(a) or (b) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony under Subsection (3)(a) or (b) is subject to a fine of not more than \$50,000 for each day of

violation, or imprisonment for a term not to exceed five years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment authorized in Subsection (4)(a)(ii).

(b) (i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or (d) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than \$50,000 for each day of violation, or imprisonment for a term not to exceed two years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment authorized in Subsection (4)(b)(ii).

(c) (i) Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or (d), who knows at that time that the person thereby places another person in imminent danger of death or serious bodily injury, is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony described in Subsection (4)(c)(i) is subject to a fine of not more than \$250,000, or imprisonment for a term not to exceed 15 years, or both.

(iii) A corporation, association, partnership, or governmental instrumentality, upon conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than \$1,000,000.

(5) (a) Except as provided in Subsections (5)(b) and (c) and Section 19-6-722, all penalties assessed and collected under authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for qualifying extraordinary expenses incurred in qualifying environmental enforcement activities.

(c) Notwithstanding the provisions of Section 78A-5-110, the department may reimburse itself and local governments from money collected from criminal fines for qualifying extraordinary expenses incurred in prosecutions for violations of this part.

(d) The department shall regulate reimbursements by making rules that define:

(i) qualifying environmental enforcement activities; and

(ii) qualifying extraordinary expenses.

(6) Prosecution for criminal violations of this part may be commenced by the attorney general, the county attorney, or the district attorney as appropriate under Section 17-18a-202 or 17-18a-203 in any county where venue is proper.

Amended by Chapter 237, 2013 General Session

19-6-114. Proof of service of notice, order, or other document.

Proof of service of any notice, order, or other document issued by, or under the authority of, the board may be made in the same manner as in the service of a summons in a civil action. Proof of service shall be filed with the board or may be made by forwarding a copy of that notice, order, or other document by registered mail, directed to the person at his last known address, with an affidavit to that effect being filed with the board.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-115. Imminent danger to health or environment -- Authority of executive director to initiate action to restrain.

Notwithstanding any other provision of this part, upon receipt of evidence that the handling, transportation, treatment, storage, or disposal of any solid or hazardous waste, or a release from an underground storage tank, is presenting an imminent and substantial danger to health or the environment, the executive director may bring suit on behalf of this state in the district court to immediately restrain any person contributing, or who has contributed, to that action to stop the handling, storage, treatment, transportation, or disposal or to take other action as appropriate.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-116. Application of part subject to state assumption of primary responsibility from federal government -- Authority of political subdivisions.

(1) The requirements of this part applicable to the generation, treatment, storage, or disposal of hazardous waste, and the rules adopted under this part, do not take effect until this state is qualified to assume, and does assume, primacy from the federal government for the control of hazardous wastes.

(2) This part does not alter the authority of political subdivisions of the state to control solid and hazardous wastes within their local jurisdictions so long as any local laws, ordinances, or rules are not inconsistent with this part or the rules of the board.

Amended by Chapter 297, 2011 General Session

19-6-117. Action against insurer or guarantor.

(1) The state may assert a cause of action directly against an insurer or guarantor of an owner or operator if:

(a) a cause of action exists against an owner or operator of a treatment, storage, or disposal facility, based upon conduct for which the director requires evidence of financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code; or

(b) jurisdiction over an owner or operator, who is likely to be solvent at the time of judgment, cannot be obtained in state or federal court.

(2) In that action, the insurer or guarantor may assert all rights and defenses available to the owner or operator, in addition to rights and defenses that would be available to the insurer or guarantor in an action brought against him by the owner or operator.

Amended by Chapter 360, 2012 General Session

19-6-117.5. Applicability of fees for treatment or disposal of waste.

Waste that is subject to more than one fee under Section 19-6-118, 19-6-118.5, or 19-6-119 is subject only to the highest applicable fee.

19-6-118. Hazardous waste and treated hazardous waste disposal fees.

(1) As used in this section:

(a) "Demilitarization waste" means:

(i) a nerve, military, or chemical agent, including:

(A) CX;

(B) GA;

(C) GB;

(D) GD;

(E) H;

(F) HD;

(G) HL;

(H) HN-1;

(I) HN-2;

(J) HN-3;

(K) HT;

(L) L; or

(M) VX; or

(ii) waste or residue from demilitarization, treatment, testing, or disposal of an agent described in Subsection (1)(a)(i).

(b) "Remediation project" means:

(i) a superfund cleanup project;

(ii) a Resource Conservation and Recovery Act closure or corrective action site; or

(iii) a voluntary cleanup of:

(A) hazardous debris; or

(B) hazardous waste subject to regulation solely because of removal or remedial action taken in response to environmental contamination.

(c) "Remediation waste" means waste from a remediation project.

(2) (a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and that is subject to the requirements of Section 19-6-108, shall pay the fee under Subsection (3).

(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste generated by off-site sources not owned, controlled, or operated by the owner or operator shall pay the fee under Subsection (3).

(3) (a) (i) Through June 30, 2014, the owner or operator of each facility under Subsection (2) shall pay a fee of \$28 per ton on all hazardous waste and mixed waste received at the facility for disposal, treatment, or both.

(ii) The fee required under Subsection (3)(a)(i) shall be calculated by multiplying the total tonnage of waste, computed to the first decimal place, received during the calendar month by \$28.

(b) (i) Through June 30, 2014, hazardous waste received at a land disposal facility is subject to a fee of \$14 per ton instead of the fee described in Subsection (3)(a) if the waste is

treated so that it:

(A) meets the state treatment standards required for land disposal at the facility; or

(B) is no longer a hazardous waste at the time of disposal at that facility.

(ii) Through June 30, 2014, demilitarization waste received at a land disposal facility is subject to the fee described in Subsection (3)(b)(i), if:

(A) the demilitarization waste contains an additional constituent that is not demilitarization waste and is required by rule to be treated before land disposal; and

(B) the additional constituent meets every applicable state treatment standard required for land disposal of that constituent at the facility.

(iii) A fee required under Subsection (3)(b)(i) shall be calculated by multiplying the tonnage of waste, computed to the first decimal place, received during the calendar month by \$14.

(c) Through June 30, 2014, when hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under Subsection (3) is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under Subsection (3).

(d) (i) In accordance with Section 63J-1-504, on or before July 1, 2014, the department shall establish a fee schedule for the treatment and land disposal of hazardous waste and mixed waste.

(ii) To create the fee schedule described in Subsection (3)(d)(i), the department shall, before establishing the fee schedule, complete a review of program costs and indirect costs of regulating hazardous waste and mixed waste in the state.

(iii) The fee schedule described in Subsection (3)(d)(i) shall:

(A) implement a flat fee not calculated according to the amount of waste treated or disposed;

(B) provide for reasonable and timely oversight by the department; and

(C) adequately meet the needs of industry and the department, including enabling the department to employ qualified personnel to appropriately oversee industry regulation.

(iv) A facility that treats or disposes of hazardous waste or mixed waste is authorized to collect the fee established under Subsection (3)(d)(i) from the generator of the waste.

(4) (a) Through June 30, 2014, remediation waste received at a hazardous waste land disposal or treatment facility from a remediation project is subject to a fee in the following amounts:

Amount of Remediation Waste Received from a Remediation Project	Fee Amount
More than 0, but less than 1,000 tons	\$28 per ton
Equal to or greater than 1,000 tons, but less than 12,500 tons	\$10 per ton for all waste
Equal to or greater than 12,500 tons, but less than 25,000 tons	\$5 per ton for all waste
Equal to or greater than 25,000 tons	\$2.50 per ton for all waste

(b) Through June 30, 2014, emission control dust/sludge from the primary production of steel in electric furnaces (K061, as defined in 40 C.F.R. Sec. 261.32) received at a hazardous waste land disposal or treatment facility is subject to a fee of \$5 per ton in lieu of the fee

established in Subsection (3).

(c) Through June 30, 2014, demilitarization waste received at a hazardous waste treatment, storage, or disposal facility is subject to a fee of \$5 per ton in addition to the fee established in Subsection (3).

(d) (i) Through June 30, 2014, the department may in accordance with this Subsection (4)(d) assess a person required to pay a fee under this section a special assessment if the department determines that the aggregate of the following fees is insufficient to cover the department's costs of administering its hazardous waste program:

(A) a fee imposed under this section; and

(B) a fee imposed under Section 19-6-118.5.

(ii) In determining the amount of a special assessment under this Subsection (4)(d), the department shall calculate the amount of the insufficiency and assess each person subject to the special assessment a proportion of the insufficiency equal to the proportion of fees paid by that person.

(iii) The department shall deposit a special assessment collected under this Subsection (4)(d) into the Environmental Quality Restricted Account created in Section 19-1-108.

(e) Through June 30, 2014, the department shall annually review the fee established in Subsection (4)(a) and make recommendations to the Legislature's Natural Resources, Agriculture, and Environment Interim Committee concerning the amount of the fee.

(5) (a) Through June 30, 2014, the department shall allocate at least 10% of the fees received from a facility under this section to the county where the facility is located, not including a special assessment.

(b) Beginning on July 1, 2014, the department shall allocate and pay to a county at least 10% of the fee established under Subsection (3)(d)(i) that the department receives from a facility in that county.

(c) The county may use fees allocated under Subsection (5) to carry out its hazardous waste monitoring and response programs.

(6) The department shall deposit the state portion of a fee received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(7) (a) (i) Except as provided in Subsection (7)(a)(ii), the owner or operator shall pay a fee, accrued under this section before June 30, 2014, to the department on or before the 15th day of the month following the month in which the fee accrued.

(ii) If a fee accrues on remediation waste under this section before June 30, 2014, the fee shall be paid in accordance with a schedule determined by the department:

(A) made in consultation with the person paying the fee; and

(B) considering any contractual schedule for payment between the person paying the fee and another person with whom the person paying the fee has contracted.

(b) With the monthly fee described in Subsection (7)(a)(i), the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(c) Beginning on July 1, 2014, an owner or operator shall submit payment of the fee established in Subsection (3)(d)(i) to the department:

(i) in accordance with a schedule provided by the department; and

(ii) using forms provided by the department.

- (8) (a) The department shall oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state.
- (b) The department may determine facility oversight priorities.
- (9) (a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the hazardous waste program established by this part.
- (b) The Legislature shall appropriate the costs of administering this program.
- (10) The Office of Legislative Fiscal Analyst shall monitor a fee collected under this part.
- (11) Mixed waste subject to a fee under this section is not subject to a fee under Section 19-3-106.

Amended by Chapter 201, 2013 General Session

19-6-118.5. PCB disposal fee.

- (1) (a) On or after July 1, 2010, but on or before June 30, 2011, the owner or operator of a waste facility shall pay a fee of \$4.75 per ton on all wastes containing polychlorinated biphenyls (PCBs) that are:
 - (i) regulated under 15 U.S.C. Sec. 2605; and
 - (ii) received at a facility for disposal or treatment.
- (b) On and after July 1, 2011, the department shall establish a fee for disposal or treatment of wastes containing polychlorinated biphenyls in accordance with Section 63J-1-504.
- (2) The owner or operator of a facility receiving PCBs for disposal or treatment shall:
 - (a) calculate the fees imposed under Subsection (1)(a) by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate of \$4.75 per ton;
 - (b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and
 - (c) with the fees required under this section, submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.
- (3) The department shall deposit the fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.
- (4) The owner or operator of a waste facility that is subject to a fee under this section is not subject to a fee for the same waste under Section 19-3-106, even if the waste contains radioactive materials.

Amended by Chapter 17, 2010 General Session

19-6-119. Nonhazardous solid waste disposal fees.

- (1) (a) Except as provided in Subsection (5), the owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste received for treatment or disposal at the facility if the facility or incinerator is required to have operation plan approval under Section 19-6-108 and primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator:

- (i) 13 cents per ton on all municipal waste and municipal incinerator ash;
- (ii) 50 cents per ton on the following wastes if the facility disposes of one or more of the following wastes in a cell exclusively designated for the waste being disposed:
 - (A) construction waste or demolition waste;
 - (B) yard waste, including vegetative matter resulting from landscaping, land maintenance, and land clearing operations;
 - (C) dead animals;
 - (D) waste tires and materials derived from waste tires disposed of in accordance with Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and
 - (E) petroleum contaminated soils that are approved by the director; and
- (iii) \$2.50 per ton on:
 - (A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and
 - (B) (I) fly ash waste;
 - (II) bottom ash waste;
 - (III) slag waste;
 - (IV) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;
 - (V) waste from the extraction, beneficiation, and processing of ores and minerals; and
 - (VI) cement kiln dust wastes.
- (b) A commercial nonhazardous solid waste disposal facility or incinerator subject to the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii) for those wastes described in Subsections (1)(a)(i) and (ii).
- (c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.
- (2) (a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned by a political subdivision shall pay the following annual facility fee to the department by January 15 of each year:
 - (i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal waste each year;
 - (ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of municipal waste each year;
 - (iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;
 - (iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;
 - (v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;
 - (vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and
 - (vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each year.
- (b) Except as provided in Subsection (5), a waste facility that is owned by a political subdivision shall pay \$2.50 per ton for:
 - (i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii) received for disposal if the waste is:
 - (A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year; and
(ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:
(A) generated outside the boundaries of the political subdivision; and
(B) received from a single generator and exceeds 500 tons in a calendar year.
(c) Waste received at a facility owned by a political subdivision under Subsection (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection (2)(a).

(3) (a) As used in this Subsection (3):

(i) "Recycling center" means a facility that extracts valuable materials from a waste stream or transforms or remanufactures the material into a usable form that has demonstrated or potential market value.

(ii) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is used to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(b) Except as provided in Subsection (5), the owner or operator of a transfer station or recycling center shall pay to the department the following fees on waste sent for disposal to a nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this section:

(i) \$1.25 per ton on:

(A) all nonhazardous solid waste; and

(B) waste described in Subsection (1)(a)(iii)(B);

(ii) 10 cents per ton on all construction and demolition waste; and

(iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

(c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee required under Subsection (3)(b)(i).

(4) If a facility required to pay fees under this section receives nonhazardous solid waste for treatment or disposal, and the fee required under this section is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this section.

(5) The owner or operator of a waste disposal facility that receives waste described in Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the purpose of recycling, reuse, or reprocessing.

(6) Except as provided in Subsection (2)(a), a facility required to pay fees under this section shall:

(a) calculate the fees by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate;

(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and

(c) with the fees required under Subsection (6)(b), submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.

(7) The department shall:

(a) deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108; and

(b) in preparing its budget for the governor and the Legislature, separately indicate the amount of the department's budget necessary to administer the solid and hazardous waste

program established by this part.

(8) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:

(a) the development of a solid waste management plan required under Section 17-15-23; and

(b) pass-through of available funding.

(9) This section does not exempt any facility from applicable regulation under the Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

Amended by Chapter 360, 2012 General Session

19-6-120. New hazardous waste operation plans -- Designation of hazardous waste facilities -- Fees for filing and plan review.

(1) For purposes of this section, the following items shall be treated as submission of a new hazardous waste operation plan:

(a) the submission of a revised hazardous waste operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the commercial hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990; or

(c) an application for modification of a commercial hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) Hazardous waste facilities that are subject to payment of fees under this section or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the department as either class I, class II, class III, or class IV facilities.

(b) The department shall designate commercial hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, incinerators, or underground injection wells, which primarily receive wastes generated by off-site sources not owned, controlled, or operated by the facility owner or operator, as class I facilities.

(4) The maximum fee for filing and review of each class I facility operation plan is \$200,000, and is due and payable as follows:

(a) The owner or operator of a class I facility shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$50,000.

(b) Upon issuance by the director of a notice of completeness under Section 19-6-108, the owner or operator of the facility shall pay to the department an additional nonrefundable sum of \$50,000.

(c) The department shall bill the owner or operator of the facility for any additional

actual costs of plan review, up to an additional \$100,000.

(5) (a) The department shall designate hazardous waste incinerators that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator as class II facilities.

(b) The maximum fee for filing and review of each class II facility operation plan is \$150,000, and shall be due and payable as follows:

(i) The owner or operator of a class II facility shall, at the time of filing for plan review under Section 19-6-108, pay to the department the nonrefundable sum of \$50,000.

(ii) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional \$100,000.

(6) (a) The department shall designate hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, or underground injection wells, that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator, as class III facilities.

(b) The maximum fee for filing and review of each class III facility operation plan is \$100,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of each class III facility for actual costs of operation plan review, up to an additional \$99,000.

(7) (a) All other hazardous waste facilities are designated as class IV facilities.

(b) The maximum fee for filing and review of each class IV facility operation plan is \$50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of each class IV facility for actual costs of operation plan review, up to an additional \$49,000.

(8) (a) The maximum fee for filing and review of each major modification plan and major closure plan for a class I, class II, or class III facility is \$50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of the review, up to an additional \$49,000.

(b) The maximum fee for filing and review of each minor modification and minor closure plan for a class I, class II, or class III facility, and of any modification or closure plan for a class IV facility, is \$20,000, and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of \$1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of review up to an additional \$19,000.

(c) The owner or operator of a thermal treatment unit shall submit a trial or test burn schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted, the owner or operator shall pay to the department the nonrefundable fee of \$25,000. The department shall apply the fee to the costs of the review and processing of each trial or test burn

plan, trial or test burn, and trial or test burn data report. The department shall bill the owner or operator of the facility for any additional actual costs of review and preparation.

(9) (a) The owner or operator of a class III facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(b) The owner or operator of a class IV facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(c) An owner or operator of a class I, class II, or class III facility who submits a major modification plan or a major closure plan may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(d) An owner or operator of a class I, class II, or class III facility who submits a minor modification plan or a minor closure plan, and an owner or operator of a class IV facility who submits a modification plan or a closure plan, may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(10) All fees received by the department under this section shall be deposited in the General Fund as dedicated credits for hazardous waste plan reviews in accordance with Subsection (12) and Section 19-6-108.

(11) (a) (i) The director shall establish an accounting procedure that separately accounts for fees paid by each owner or operator who submits a hazardous waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste plan reviews under this section or Section 19-1-201.

(ii) The director shall credit all fees paid by the owner or operator to that owner or operator.

(iii) The director shall account for costs actually incurred in reviewing each operation plan and may only use the fees of each owner or operator for review of that owner or operator's plan.

(b) If the costs actually incurred by the department in reviewing a hazardous waste operation plan of any facility are less than the nonrefundable fee paid by the owner or operator under this section, the department may, upon approval or disapproval of the plan by the board or upon withdrawal of the plan by the owner or operator, use any remaining funds that have been credited to that owner or operator for the purposes of administering provisions of the hazardous waste programs and activities authorized by this part.

(12) (a) With regard to any review of a hazardous waste operation plan, modification plan, or closure plan that is pending on April 25, 1988, the director may assess fees for that plan review.

(b) The total amount of fees paid by an owner or operator of a hazardous waste facility whose plan review is affected by this subsection may not exceed the maximum fees allowable under this section for the appropriate class of facility.

(13) (a) The department shall maintain accurate records of its actual costs for each plan review under this section.

(b) Those records shall be available for public inspection.

Amended by Chapter 360, 2012 General Session

19-6-121. Local zoning authority powers.

Nothing in this part prohibits any local zoning authority from adopting zoning criteria for commercial hazardous waste disposal facilities or sites that are more stringent than any requirements adopted by the department.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-122. Facilities to meet local zoning requirements.

Notwithstanding any provisions of this part, persons seeking to operate a commercial hazardous waste disposal facility or site shall meet all local zoning requirements before beginning operations.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-123. Kilns -- Siting.

A cement kiln or lightweight aggregate kiln may not accept hazardous waste for recycling or for use as fuel without meeting the siting criteria for commercial hazardous waste treatment, storage, and disposal facilities established under Section 19-6-105.

Enacted by Chapter 219, 1991 General Session

19-6-124. Burial of nonhazardous solid waste by an individual.

(1) Notwithstanding any other provision of this chapter, an individual may bury nonhazardous solid waste on the individual's own property if:

(a) the individual lives in an area where no public or duly licensed waste disposal service is available;

(b) the individual owns the nonhazardous solid waste; and

(c) the nonhazardous solid waste is generated on the individual's private property.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules necessary for the administration of this section.

Enacted by Chapter 287, 2014 General Session

19-6-125. Incineration of medical waste.

(1) Except as provided in Subsection (2), the division may not approve an operation plan or issue a permit for construction of a new facility that:

(a) incinerates infectious waste or chemotherapeutic agents; and

(b) is located within a two-mile radius of an area zoned residential on January 1, 2014.

(2) The division may approve renewal or modification of an operation plan or a permit for a facility that is in operation as of May 13, 2014.

Enacted by Chapter 198, 2014 General Session

19-6-201. Short title.

This part is known as the "Hazardous Waste Facility Siting Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-202. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.

(3) "Hazardous wastes" means wastes as defined in Section 19-6-102.

(4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials, including physical, chemical, or thermal processing systems, incinerators, and secure landfills.

(5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

(6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the board pursuant to Sections 19-6-204 and 19-6-205.

(7) "Storage" means the containment of hazardous wastes for a period of more than 90 days.

(8) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

Amended by Chapter 297, 2011 General Session

19-6-203. Other provisions relating to hazardous waste.

This part may not be construed to supersede any other state or local law relating to hazardous waste, except as otherwise provided in Section 19-6-207.

Amended by Chapter 297, 2011 General Session

19-6-204. Guidelines for facility siting -- Considerations in adopting.

(1) The board shall adopt and publish guidelines for the location of hazardous waste treatment, storage, and disposal facilities. The guidelines shall ensure that facilities are sited so that the wastes located there will not constitute an unacceptable health hazard or impact the environment in an unacceptable manner.

(2) Proposed guidelines for siting shall take into account the following considerations:

(a) the zoning classification of the site proposed and its proximity to present or projected land use dedicated to industrial development;

(b) the existing land uses and the density of population in areas neighboring the proposed site;

(c) the density of population in areas adjacent to probable hazardous waste delivery routes;

- (d) the risk and impact of accidents which might occur during the transportation of hazardous wastes to the site;
- (e) the determination of areas that are dedicated to an incompatible public use or are unsuitable for other reasons for the location of hazardous wastes;
- (f) the geology of the proposed site with special attention to the presence of fault zones and the risk of contamination to ground and surface waters through leaching and runoff;
- (g) the risk to life and property from fires or explosions that might occur if improper storage and disposal methods are used;
- (h) the economic and environmental impact of the proposed facility site location upon local governmental units adjacent to, or within which, the facility is proposed for location;
- (i) closure and postclosure monitoring and maintenance requirements; and
- (j) other criteria required for the siting of hazardous wastes under state or federal law.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.

(1) After completion of the guidelines, the board shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the board in accordance with Subsection (2) and shall be based upon the guidelines adopted under Section 19-6-204 and be published within one year after adoption of the guidelines.

(2) (a) After completion of its guidelines, the board shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the board of an interest or involvement in hazardous waste management activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the board for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The board, in cooperation with other state agencies and private sources, shall then prepare an inventory of:

- (i) the hazardous wastes generated in the state;
- (ii) those likely to be generated in the future;
- (iii) those being generated in other states that are likely to be treated, disposed of, or stored in the state;
- (iv) the sites within the state currently being used for hazardous waste and those suggested through the nomination process;
- (v) the treatment, storage, and disposal processes and management practices that are required to comply with Section 19-6-108; and
- (vi) an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d) (i) After the hazardous waste inventory and cost estimate are complete, the board, with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years.

(ii) The board may not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations to industrial use or to areas located near industrial uses. However, the board shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its county executive and county legislative body.

(e) The board shall also analyze and identify areas of the state where, due to the concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites.

(b) Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan.

(c) The board shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost.

(d) After release of the preliminary siting plan, the board shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of the hearings, the board shall prepare and make available for public inspection a summary of public comments.

(4) (a) The board, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan.

(b) The final siting plan shall be widely distributed to members of the public.

(c) The board, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views.

(d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan.

(5) (a) Any person adversely affected by the board's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the board's decision.

(b) Judicial review may be had, however, only on the grounds that the board violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(6) If the final siting plan is adopted, the board shall cause it to be published.

(7) After publication of the final siting plan, the board shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the board.

(8) (a) If necessary, the board may amend the siting plan to provide additional sites or

delete sites which are no longer suitable.

(b) Before any plan amendment adding or deleting a site is adopted, the board, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(9) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this part shall select a site contained on the final site plan.

(10) Nothing in this part, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this part.

Amended by Chapter 297, 2011 General Session

19-6-206. Exclusive remedy for devaluation of property caused by approved facility.

(1) Before construction of a hazardous waste management facility, but in no case later than nine months after approval of a plan for a hazardous waste treatment, storage, or disposal facility, any owner or user of property adversely affected by approval may bring an action in a district court of competent jurisdiction against the owner of the proposed facility. If the court determines that the planned construction and operation of the hazardous waste management facility will result in the devaluation of the plaintiff's property or will otherwise interfere with the plaintiff's rights in the property, it shall order the owner to compensate the plaintiff in an amount equal to the value of the plaintiff's loss.

(2) The remedy provided in Subsection (1) is the exclusive remedy for owners or users aggrieved by the proposed construction and operation of a hazardous waste treatment, disposal, or storage facility, and no court has jurisdiction to enjoin the construction or operation of any facility located at a site included in the siting plan adopted by the board.

(3) Nothing in this part prevents an owner or user of property aggrieved by the construction and operation of a facility from seeking damages that result from a subsequent modification of the design or operation of a facility but damages are limited to the incremental damage that results from the modification. Any action for damages from a modification shall be brought within nine months after the plans for modification of the design or operation of the facility are approved.

(4) For the purpose of assessing damages, the value of the rights affected is fixed at the date the facility plan is approved and the actual value of the right at that date is the basis for the determination of the amount of damage suffered, and no improvements to the property subsequent to the date of approval of the plans shall be included in the assessment of damages. Similarly, for any subsequent modification of a facility, value is fixed at the date of approval of the amended facility plan.

(5) The owner or operator of a proposed facility may, at any time before an award of damages, abandon the construction or operation of the facility or any modification and cause the action to be dismissed. As a condition of dismissal, however, the owner or operator shall compensate the plaintiff for any actual damage sustained as a result of construction or operation of the facility before abandonment together with court costs and a reasonable attorney's fee.

(6) Nothing in this part prevents a court from enjoining any activity at a hazardous waste facility that is outside of, or not in compliance with, the terms and conditions of an approved hazardous waste operations plan.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-207. Facility at site approved in siting plan -- Exemption from zoning and local approval requirements -- Transportation restrictions limited.

(1) The construction or operation of a hazardous waste treatment, storage, or disposal facility at a site included within the siting plan is not required to conform to any local zoning or other land use regulation, law, or ordinance.

(2) The owner of any hazardous waste treatment, storage, or disposal facility proposed to be located at a site included in the siting plan is not required to obtain approval of the site from any county or municipal planning commission or similar authority and no local unit of government may prohibit or unduly restrict the transportation of hazardous waste through the governmental unit to an approved hazardous waste treatment, storage, or disposal facility.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-208. Facilities subject to Industrial Facilities and Development Act.

The financing, acquiring, constructing, reconstructing, improving, maintaining, equipping, or finishing of a hazardous waste treatment, disposal, or storage facility is deemed, where applicable, to be a "project," subject to the Utah Industrial Facilities and Development Act.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-301. Short title.

This part is known as the "Hazardous Substances Mitigation Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-302. Definitions.

As used in this part:

(1) (a) "Abatement action" means to take steps or contract with someone to take steps to eliminate or mitigate the direct or immediate threat to the public health or the environment caused by a hazardous materials release.

(b) "Abatement action" includes control of the source of the contamination.

(2) "Bona fide prospective purchaser" has the meaning given in 42 U.S.C. Sec. 9601(40) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter," and including "hazardous materials" where the term "hazardous substances" appears.

(3) "CERCLA" means 42 U.S.C. 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act.

(4) "Cleanup action" means action taken according to the procedures established in this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous material

from a facility.

(5) "Contiguous property owner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(q)(1) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter."

(6) "Enforcement action" means the procedures contained in Section 19-6-306 to enforce orders, rules, and agreements authorized by this part.

(7) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous material or substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(b) "Facility" does not mean any consumer product in consumer use or any vessel.

(8) "Fund" means the Hazardous Substances Mitigation Fund created by Section 19-6-307.

(9) "Hazardous materials" means hazardous waste as defined in the Utah Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated under 42 U.S.C. Section 6991(7).

(10) "Hazardous substances" means the definition of hazardous substances contained in CERCLA.

(11) "Hazardous substances priority list" means a list of facilities meeting the criteria established by Section 19-6-311 that may be addressed under the authority of this part.

(12) "Innocent landowner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(b)(3) of CERCLA.

(13) "National Contingency Plan" means the National Oil and Hazardous Substance Contingency plan established by CERCLA.

(14) "National Priority List" means the list established by CERCLA.

(15) "National priority list site" means a site in Utah that is listed on the National Priority List.

(16) "Proposed national priority list site" means a site in Utah that has been proposed by the Environmental Protection Agency for listing on the National Priority List.

(17) (a) "Release" means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of substances into the environment that is not authorized under state or federal law, rule, or regulation.

(b) "Release" includes abandoning or discarding barrels, containers, and other closed receptacles containing any hazardous material or substance, unless the discard or abandonment is authorized under state or federal law, rule, or regulation.

(18) "Remedial action" means action taken consistent with the substantive requirements of CERCLA according to the procedures established by this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous substance from a facility on the hazardous substances priority list.

(19) "Remedial action plan" means a plan for remedial action consistent with the substantive requirements of CERCLA and approved by the executive director.

(20) "Remedial investigation" means a remedial investigation and feasibility study as defined in the National Contingency Plan established by CERCLA.

- (21) (a) "Responsible party" means:
- (i) the owner or operator of a facility;
 - (ii) any person who, at the time any hazardous substance or material was disposed of at the facility, owned or operated the facility;
 - (iii) any person who arranged for disposal or treatment, or arranged with a transporter for transport, for disposal, or treatment of hazardous materials or substances owned or possessed by the person, at any facility owned or operated by another person and containing the hazardous materials or substances; or
 - (iv) any person who accepts or accepted any hazardous materials or substances for transport to a facility selected by that person from which there is a release that causes the incurrence of response costs.
- (b) For hazardous materials or substances that were delivered by a motor carrier to any facility, "responsible party" does not include the motor carrier, and the motor carrier may not be considered to have caused or contributed to any release at the facility that results from circumstances or conditions beyond its control.
- (c) "Responsible party" under Subsections (21)(a)(i) and (ii) does not include:
- (i) any person who does not participate in the management of a facility and who holds indicia of ownership:
 - (A) primarily to protect a security interest in a facility; or
 - (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan;
 - (ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D) and 40 CFR 300.1105, National Contingency Plan; or
 - (iii) any person, including a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan who holds indicia of ownership and did not participate in the management of a facility prior to foreclosure in accordance with 42 U.S.C. Sec. 9601(20)(E)(ii) of CERCLA.
- (d) The exemption created by Subsection (21)(c)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.
- (e) The terms "security interest," "participate in management," "foreclose," and "foreclosure" under this part are defined in accordance with 42 U.S.C. Sec. 9601(20)(E), (F), and (G) of CERCLA.
- (22) "Scored site" means a facility in Utah that meets the requirements of scoring established by the National Contingency Plan for placement on the National Priority List.

Amended by Chapter 356, 2009 General Session

19-6-302.5. Retroactive effect.

- (1) The Legislature finds the language in this part, prior to the passage of this act, did not clearly set forth procedures for identifying responsible parties and allocating among those parties response costs at sites where hazardous substances or materials have been released. This lack of clarity has interfered with effective allocation of costs of cleanup as required by this part.
- (2) It is the intent of the Legislature that this act provides clarification of the Legislature's original intent to facilitate cleanups of hazardous substances or materials by providing clarification of procedures for allocating liability and response costs.

(3) (a) It is the intent of the Legislature that liability as determined under this act applies retroactively to any release of a hazardous substance or material subject to or currently in the process of investigation, abatement, or corrective action under this part as of the effective date of this act.

(b) Any responsible party whose liability for cleanup costs is absolved or altered by the provisions of this act is subject only to further costs or action as required by this part.

Enacted by Chapter 324, 1995 General Session

19-6-303. Rulemaking provisions.

The executive director may regulate hazardous substances releases by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the substantive requirements of CERCLA, to establish the requirements for remedial investigation studies and remedial action plans.

Amended by Chapter 382, 2008 General Session

19-6-304. Inspections.

(1) Upon presentation of appropriate credentials and at any reasonable time, any authorized officer, employee, or representative of the department may:

(a) enter and inspect any property, premises, or place where he has reason to believe there is a hazardous materials or substances release;

(b) copy any records relating to those hazardous materials or substances to determine compliance with this part and the rules made under authority of this part; and

(c) inspect and take samples of any suspected hazardous material or substance.

(2) If the department's representative takes samples of any suspected hazardous material or substance under authority of this section, he shall:

(a) give a receipt describing the sample taken to the owner, operator, or agent who has control of the suspected hazardous material or substance;

(b) if requested and if possible, give the owner, operator, or agent a split sample of the suspected hazardous material or substance equal in volume or weight to the portion he retains; and

(c) if an analysis of any sample is made, upon request, promptly furnish a copy of the results of the analysis to the owner, operator, or agent.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-306. Penalties -- Lawsuits.

(1) Any person who violates any final order or rule issued or made under this part is subject in a civil proceeding to a penalty of not more than \$10,000 per day for each day of violation.

(2) Any person who violates the terms of any agreement made under authority of this part is subject in a civil proceeding to pay:

(a) any penalties stipulated in the agreement; or

(b) if no penalties are stipulated in the agreement, a penalty of not more than \$10,000 per

day for each day of violation.

(3) The executive director shall deposit all civil penalties collected under the authority of this section into the General Fund.

(4) (a) The executive director may enforce any orders issued under authority of this part by bringing a suit to enforce the order in the district court in Salt Lake County or in the district court in the county where the hazardous substances release occurred.

(b) After a remedial investigation has been completed, the executive director may bring a suit in district court against all responsible parties, asking the court for injunctive relief and to apportion liability among the responsible parties for performance of remedial action.

Amended by Chapter 324, 1995 General Session

19-6-307. Hazardous Substances Mitigation Fund -- Uses.

(1) There is created an expendable special revenue fund entitled the "Hazardous Substances Mitigation Fund."

(2) The fund consists of money generated from the following revenue sources:

(a) any voluntary contributions received for the cleanup of hazardous substances facilities;

(b) appropriations made to the fund by the Legislature; and

(c) money received by the state under Section 19-6-310 and Section 19-6-316.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(4) The executive director may use fund money to:

(a) take emergency action as provided in Sections 19-6-309 and 19-6-310;

(b) conduct remedial investigations as provided in Sections 19-6-314 through 19-6-316;

(c) pay the amount required by the federal government as the state's portion of the cost of cleanups under authority of CERCLA, as appropriated by the Legislature for that purpose; and

(d) pay the amount required by the federal government as the state's portion of the cost of cleanups under 42 U.S.C. 6991 et seq., the Leaking Underground Storage Tank Trust Fund, as appropriated by the Legislature for that purpose.

Amended by Chapter 400, 2013 General Session

19-6-308. Hazardous Substances Mitigation Fund -- Prohibited uses.

The executive director may not use fund money to pay for:

(1) property damage or bodily injury resulting from a hazardous material or substance release; or

(2) property damage or bodily injury resulting from remedial studies or abatement action taken to address a hazardous material or substance release.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-309. Emergency provisions.

(1) (a) If the executive director has reason to believe any hazardous materials release that occurred after March 18, 1985, is presenting a direct and immediate threat to public health or the

environment, the executive director may:

(i) issue an order requiring the owner or operator of the facility to take abatement action within the time specified in the order; or

(ii) bring suit on behalf of the state in the district court to require the owner or operator to take immediate abatement action.

(b) If the executive director determines the owner or operator cannot be located or is unwilling or unable to take abatement action, the executive director may:

(i) reach an agreement with one or more potentially responsible parties to take abatement action; or

(ii) use fund money to investigate the release and take abatement action.

(2) The executive director may use money from the fund created in Section 19-6-307:

(a) for abatement action even if an adjudicative proceeding or judicial review challenging an order or a decision to take abatement action is pending; and

(b) to investigate a suspected hazardous materials release if he has reason to believe the release may present a direct and immediate threat to public health.

(3) This section takes precedence over any conflicting provision in this part.

Amended by Chapter 30, 1992 General Session

19-6-310. Apportionment of liability -- Liability agreements -- Legal remedies.

(1) The executive director may recover only the proportionate share of costs of any investigation and abatement performed under Section 19-6-309 and this section from each responsible party, as provided in this section.

(2) (a) In apportioning responsibility for the investigation and abatement, or liability for the costs of the investigation and abatement, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous materials contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation and abatement costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4) (a) Any party who incurs costs under Section 19-6-309 and this section in excess of his liability may seek contribution from any other party who is or may be liable under Section 19-6-309 and this section for the excess costs in the district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5) (a) A party who has resolved his liability in an agreement under Section 19-6-309 and this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement.

(6) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Section 19-6-309 and this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Section 19-6-309 and this section may seek contribution from any person who is not party to an agreement under Section 19-6-309 and this section.

(7) (a) An agreement made under Section 19-6-309 and this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Section 19-6-309 and this section or any other applicable authority.

(8) (a) The executive director may not recover costs of any investigation performed under the authority of Subsection 19-6-309(2)(b) if the investigation does not confirm that a release presenting a direct and immediate threat to public health has occurred.

(b) This subsection takes precedence over any conflicting provision of this section regarding cost recovery.

Amended by Chapter 356, 2009 General Session

19-6-311. Hazardous substances priority list.

(1) The executive director shall develop and, as frequently as is necessary, revise a hazardous substances priority list by making a rule that:

(a) identifies separately national priority list sites, proposed national priority list sites, and scored sites that pose a significant threat to the public health or the environment; and

(b) declares those sites to be eligible to be addressed under the authority granted by this part.

(2) The executive director may not spend fund money or use the authority granted by this part to address any facilities containing hazardous substances that are not on the hazardous substances priority list.

(3) The executive director shall remove facilities from the hazardous substances priority list when appropriate.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-312. Preinvestigation requirements.

Before undertaking any remedial investigations on a facility on the hazardous substances priority list, the executive director shall make reasonable attempts to:

(1) identify potentially responsible parties for each facility; and

(2) send written notice to each potentially responsible party informing him of his potential responsibility.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-313. Priority of other statutes.

The executive director may not spend fund money or take action under authority of Sections 19-6-314 through 19-6-320 to address hazardous substances on any facility listed on the hazardous substances priority list if the facility can be cleaned up under any other state statute.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-314. Remedial investigations of priority list sites -- Parties involved -- Powers of the executive director.

(1) All remedial investigations conducted under the authority of this section shall:

(a) meet the substantive requirements of CERCLA;

(b) follow procedures established by the National Contingency Plan to avoid inconsistent state and federal action; and

(c) include recommendations for remedial action.

(2) (a) After determining that a hazardous substance release is occurring from a national priority list site or proposed national priority list site, and identifying responsible parties under Section 19-6-312, the executive director shall make reasonable efforts to reach an agreement with the identified responsible parties to conduct a remedial investigation.

(b) The executive director may define in the agreement the scope of the remedial investigation, the form of the report, and the time limits for completion of the investigation.

(c) If any responsible party fails to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

(3) (a) If the executive director is unable to reach an agreement with one or more responsible parties to perform a remedial investigation, the executive director may issue an order directing one or more responsible parties to perform the remedial investigation.

(b) The executive director may define in the order the scope of the remedial investigation, the form of the report, and the time limits for completion of the remedial investigation.

(4) (a) If the executive director is unable to obtain an agreement with one or more responsible parties to perform a remedial investigation, chooses not to order any responsible party to perform the remedial investigation, or determines that the remedial investigation performed by a responsible party does not meet the substantive requirements of CERCLA, he may direct the department to conduct or correct the remedial investigation.

(b) The executive director may recover the costs incurred in conducting a remedial investigation from responsible parties according to the standards contained in Section 19-6-316.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-315. Remedial investigations of scored sites -- Parties involved -- Powers of the executive director.

(1) All remedial investigations conducted under the authority of this section shall:

(a) meet the substantive requirements of CERCLA; and

(b) include recommendations for remedial action.

(2) (a) After determining that a hazardous substance release is occurring from a scored site and identifying responsible parties under Section 19-6-312, the executive director shall make reasonable efforts to reach an agreement with the identified responsible parties to perform a remedial investigation.

(b) The executive director may define in the agreement the scope of the investigation, the form of the report, and the time limits for completion of the investigation.

(c) If the potentially responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

(3) (a) If the executive director is unable to reach an agreement with one or more responsible parties to perform a remedial investigation, or determines that the remedial investigation performed by responsible parties does not meet the substantive requirements of CERCLA, he may direct the department to conduct or correct the remedial investigation.

(b) The executive director may recover the costs incurred in conducting a remedial investigation from responsible parties according to the standards contained in Section 19-6-316.

19-6-316. Liability for costs of remedial investigations -- Liability agreements.

(1) The executive director may recover only a proportionate share of costs of any remedial investigation performed under Sections 19-6-314 and 19-6-315 from each responsible party, as provided in this section.

(2) (a) In apportioning responsibility for the remedial investigation, or liability for the costs of the remedial investigation, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of

liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5) (a) A party who has resolved his liability in an agreement under Sections 19-6-314 through this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this Subsection (5)(b) reduces the potential liability of other responsible parties by the amount of the agreement.

(6) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-314 through this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-314 through this section may seek contribution from any person who is not party to an agreement under Sections 19-6-314 through this section.

(7) (a) An agreement made under Sections 19-6-314 through this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Sections 19-6-314 through this section or any other applicable authority.

Amended by Chapter 324, 2010 General Session

19-6-317. Remedial investigation report -- Remedial action plan implementation -- Legal remedies.

(1) Upon receipt of a remedial investigation report for a national priority list site, the executive director shall:

(a) review the report;

(b) provide a period for public comment;

(c) issue an order defining a remedial action plan consistent with CERCLA for the facility; and

(d) follow the procedures established by the National Contingency Plan to avoid inconsistent state and federal action.

(2) (a) To implement the remedial action plan, the executive director shall seek to reach

an agreement with all responsible parties to perform the remedial action.

(b) The executive director may define in the agreement the remedial action required and the time limits for completion of the remedial action.

(c) If the responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

(3) (a) If the executive director is unable to reach an agreement with one or more responsible parties to perform remedial action, he may order all responsible parties to perform the remedial action.

(b) The executive director may define in the order the remedial action required and the time limits for completion of the remedial action.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-318. Remedial action liability -- Liability agreements.

(1) (a) In apportioning responsibility for the remedial action in any administrative proceeding or judicial action under Sections 19-6-317 and 19-6-319, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (1)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (1)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (1)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an

administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the director shall apportion liability to the party solely based on available evidence and the standards of Subsection (1)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of remedial action costs.

(2) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(3) (a) Any party who incurs costs under Sections 19-6-317 through 19-6-320 in excess of his liability may seek contribution from any other party who is or may be liable under Sections 19-6-317 through 19-6-320 for the excess costs in district court.

(b) In resolving claims made under Subsection (3)(a), the court shall allocate costs using the standards set forth in Subsection (1).

(4) (a) A party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320 is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this Subsection (4)(b) reduces the potential liability of other responsible parties by the amount of the agreement.

(5) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (1) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-317 through 19-6-320 may seek contribution from any person who is not party to an agreement under Sections 19-6-317 through 19-6-320.

(6) (a) An agreement made under Sections 19-6-317 through 19-6-320 may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments, he may recover the amount using the authority of Sections 19-6-317 through 19-6-320 or any other applicable authority.

Amended by Chapter 324, 2010 General Session

19-6-319. Remedial action investigation report -- Remedial action plan implementation -- Enforcement provisions.

(1) Upon receipt of a remedial action investigation report for a proposed national priority list site or a scored site, the executive director shall:

(a) review the report;

- (b) provide a period for public comment; and
- (c) issue an order defining the remedial action plan for the facility.
- (2) (a) To implement the remedial action plan, the executive director shall seek to reach an agreement with all responsible parties to perform the remedial action.
- (b) In reaching an agreement for a proposed national priority list site, the executive director shall follow procedures established by the National Contingency Plan to avoid inconsistent state and federal action.
- (c) The executive director may define in the agreement the remedial action required and the time limits for completion of the remedial action.
- (d) If the responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-320. Remedial action completion procedures -- Legal remedies.

- (1) A party who has entered an agreement or who has been issued a final order under the authority of Sections 19-6-317 through this section shall send notice to the executive director when the remedial action for the facility is completed.
- (2) Upon notice that remedial action at a facility is complete, the executive director shall inspect the facility to determine if the remedial action plan as implemented meets the substantive requirements of CERCLA.
- (3) If the executive director determines that the remedial action plan as implemented meets the substantive requirements of CERCLA, except for any ongoing activities at the facility, including operation, maintenance, or monitoring, he shall issue a notice of agency action declaring that remedial action at the facility is complete and removing the facility from the hazardous substances priority list.
- (4) (a) If the executive director determines that the remedial action plan for a national priority list site, as implemented, does not meet the substantive requirements of CERCLA, he may issue an order directing the responsible parties to take additional actions to implement the remedial action plan.
- (b) If the responsible parties refuse to comply with the order the executive director may take enforcement action.
- (5) (a) If the executive director determines that the remedial action plan for a proposed national priority list site or a scored site has not been properly and completely implemented according to the agreement between the executive director and the responsible parties, or is not consistent with the substantive requirements of CERCLA, he shall request that the responsible parties take additional actions to fulfill the agreement to implement the remedial action plan.
- (b) If the responsible parties refuse to comply with the request, the executive director may take action to enforce the agreement.

Amended by Chapter 275, 2001 General Session

19-6-321. Construction with other state and federal laws -- Governmental immunity.

- (1) Except as provided in Subsection (2), nothing in this part affects or modifies in any

way the obligations or liability of any person under a contract or any other provision of this part or state or federal law, including common law, for damages, indemnification, injury, or loss associated with a hazardous material or substance release or a substantial threat of a hazardous material or substance release.

(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

(3) Nothing in this part affects, limits, or modifies in any way the authority granted to the state, any state agency, or any political subdivision under other state or federal law.

Amended by Chapter 382, 2008 General Session

19-6-322. Cooperative agreements with federal government -- Legislative findings.

Due to the enactment of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, PL 96-510, and recognizing the applicability of that act to the unauthorized or accidental discharge of hazardous substances or to inactive hazardous waste sites in the state of Utah, the Legislature finds and declares it to be in the public interest to enter into agreements with the federal Environmental Protection Agency to undertake activities and perform remedial and removal actions as provided by PL 96-510, to protect the public health, safety, and welfare.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-323. Department authority to enter cooperative agreements.

The department, on behalf of the state, is authorized to undertake activities and enter into contracts and cooperative agreements with the federal Environmental Protection Agency as provided by the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, PL 96-510.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-325. Voluntary agreements -- Parties -- Funds -- Enforcement.

(1) (a) Under this part, and subject to Subsection (1)(b), the executive director may enter into a voluntary agreement with a responsible party providing for the responsible party to conduct an investigation or a cleanup action on sites that contain hazardous materials.

(b) The executive director and a responsible party may not enter into a voluntary agreement under this part unless all known potentially responsible parties:

(i) have been notified by either the executive director or the responsible party of the proposed agreement; and

(ii) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(2) (a) The executive director may receive funds from any responsible party that signs a voluntary agreement allowing the executive director to:

(i) review any proposals outlining how the investigation or cleanup action is to be

performed; and

(ii) oversee the investigation or cleanup action.

(b) Funds received by the executive director under this section shall be deposited in the fund and used by the executive director as provided in the voluntary agreement.

(3) If a responsible party fails to perform as required under a voluntary agreement entered into under this part, the executive director may take action and seek penalties to enforce the agreement as provided in the agreement.

(4) The executive director may not use the provisions of Section 19-6-310, 19-6-316, or 19-6-318 to recover costs received or expended pursuant to a voluntary agreement from any person not a party to that agreement.

(5) (a) Any party who incurs costs under a voluntary agreement in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.

(b) In resolving claims made under Subsection (5)(a), the court shall allocate costs using the standards in Subsection 19-6-310(2).

(6) This section takes precedence over conflicting provisions in this chapter regarding agreements with responsible parties to conduct an investigation or cleanup action.

Amended by Chapter 324, 2010 General Session

19-6-326. Written assurances.

(1) Based upon risk to human health or the environment from potential exposure to hazardous substances or materials, the executive director may issue enforceable written assurances to a bona fide prospective purchaser, contiguous property owner, or innocent landowner of real property that no enforcement action under this part may be initiated regarding that real property against the person to whom the assurances are issued.

(2) An assurance granted under Subsection (1) grants the person to whom the assurance is issued protection from imposition of any state law cost recovery and contribution actions under this part.

(3) The executive director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the administration of this section.

Amended by Chapter 382, 2008 General Session

19-6-401. Short title.

This part is known as the "Underground Storage Tank Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-402. Definitions.

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:

(a) a release from an underground storage tank or petroleum storage tank; or

(b) the damage caused by that release.

(2) "Board" means the Solid and Hazardous Waste Control Board created in Section

19-1-106.

(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a person.

(4) "Certificate of compliance" means a certificate issued to a facility by the director:

(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and

(b) listing all tanks at the facility, specifying:

(i) which tanks may receive petroleum; and

(ii) which tanks have not met the requirements for compliance.

(5) "Certificate of registration" means a certificate issued to a facility by the director demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:

(a) registered the tanks; and

(b) paid the annual underground storage tank fee.

(6) (a) "Certified underground storage tank consultant" means a person who:

(i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank release:

(A) management;

(B) abatement;

(C) investigation;

(D) corrective action; or

(E) evaluation;

(ii) has submitted an application to the director;

(iii) received a written statement of certification from the director; and

(iv) meets the education and experience standards established by the board under

Subsection 19-6-403(1)(a)(vii).

(b) "Certified underground storage tank consultant" does not include:

(i) (A) an employee of the owner or operator of the underground storage tank; or

(B) an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and markets petroleum products or manages underground storage tanks; or

(ii) a person licensed to practice law in this state who offers only legal advice on underground storage tank release:

(A) management;

(B) abatement;

(C) investigation;

(D) corrective action; or

(E) evaluation.

(7) "Closed" means an underground storage tank no longer in use that has been:

(a) emptied and cleaned to remove all liquids and accumulated sludges; and

(b) (i) removed from the ground; or

(ii) filled with an inert solid material.

(8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for any of the following:

(a) cleanup or removal of the release;

- (b) containment or isolation of the release;
- (c) treatment of the release;
- (d) correction of the cause of the release;
- (e) monitoring and maintenance of the site of the release;
- (f) provision of alternative water supplies to a person whose drinking water has become contaminated by the release; or

- (g) temporary or permanent relocation, whichever is determined by the director to be more cost-effective, of a person whose dwelling has been determined by the director to be no longer habitable due to the release.

(9) "Costs" means money expended for:

- (a) investigation;
- (b) abatement action;
- (c) corrective action;
- (d) judgments, awards, and settlements for bodily injury or property damage to third parties;

- (e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

- (f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.

(10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.

(11) "Director" means the director of the Division of Environmental Response and Remediation.

(12) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).

(13) "Dwelling" means a building that is usually occupied by a person lodging there at night.

(14) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.

(15) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.

(16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

(17) "Operator" means a person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.

(18) "Owner" means:

- (a) in the case of an underground storage tank in use on or after November 8, 1984, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and

- (b) in the case of an underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, a person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

(19) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

- (a) 60 degrees Fahrenheit; and

- (b) a pressure of 14.7 pounds per square inch absolute.

(20) "Petroleum storage tank" means a tank that:

(a) (i) is underground;
(ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq.; and
(iii) contains petroleum; or

(b) the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.

(21) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.

(22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.

(23) "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

(24) (a) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing.

(b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(25) (a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from an underground storage tank or petroleum storage tank.

(b) A release of a regulated substance from an underground storage tank or petroleum storage tank is considered a single release from that tank system.

(26) (a) "Responsible party" means a person who:

(i) is the owner or operator of a facility;

(ii) owns or has legal or equitable title in a facility or an underground storage tank;

(iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;

(iv) operated or otherwise controlled activities at a facility at the time petroleum was received or contained at the facility; or

(v) is an underground storage tank installation company.

(b) "Responsible party" is as defined in Subsections (26)(a)(i), (ii), and (iii) does not include:

(i) a person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:

(A) primarily to protect the person's security interest in the facility; or

(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan; or

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

(c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

(e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the

fiduciaries listed in Subsection (26)(b)(i)(B).

(27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

(28) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

(29) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

- (a) a petroleum storage tank;
- (b) underground pipes and lines connected to a storage tank;
- (c) underground ancillary equipment;
- (d) a containment system; and
- (e) each compartment of a multi-compartment storage tank.

(30) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.

(31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.

(32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

Amended by Chapter 227, 2014 General Session

19-6-402.5. Retroactive effect.

(1) The Legislature finds the definitions in this part prior to the passage of this act did not clearly set forth procedures for identifying responsible parties and interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification regarding procedures for allocating responsibility for the costs of investigation, abatement, and corrective action as required under this part.

(3) It is the intent of the Legislature that this part imposes liability as determined under this part retroactively to any release of petroleum or any other regulated substance subject to investigation, abatement, or corrective action under this part.

Enacted by Chapter 214, 1992 General Session

19-6-403. Powers and duties of board.

The board shall regulate an underground storage tank or petroleum storage tank by:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that:

- (a) provide for the:
 - (i) certification of an underground storage tank installer, inspector, tester, or remover;
 - (ii) registration of an underground storage tank operator;
 - (iii) registration of an underground storage tank;

- (iv) administration of the petroleum storage tank program;
- (v) format of, and required information in, a record kept by an underground storage or petroleum storage tank owner or operator who is participating in the fund;
- (vi) voluntary participation in the fund for:
 - (A) an above ground petroleum storage tank; and
 - (B) a tank:
 - (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and
 - (II) specified in Section 19-6-415; and
- (vii) certification of an underground storage tank consultant including:
 - (A) a minimum education or experience requirement; and
 - (B) a recognition of the educational requirement of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, as meeting the education requirement for certification;
- (b) adopt the requirements for an underground storage tank contained in:
 - (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future; and
 - (ii) an applicable federal requirement authorized by the federal law referenced in Subsection (1)(b)(i); and
- (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and
- (2) applying the provisions of this part.

Amended by Chapter 310, 2012 General Session
Amended by Chapter 360, 2012 General Session

19-6-404. Powers and duties of director.

- (1) The director shall:
 - (a) administer the petroleum storage tank program established in this part; and
 - (b) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.
- (2) As necessary to meet the requirements or carry out the purposes of this part, the director may:
 - (a) advise, consult, and cooperate with other persons;
 - (b) employ persons;
 - (c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
 - (d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
 - (e) collect and disseminate information;
 - (f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
 - (g) review plans, specifications, or other data;
 - (h) under the direction of the executive director, represent the state in all matters

pertaining to interstate underground storage tank management and control, including entering into interstate compacts and other similar agreements;

(i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:

(i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and

(ii) the director determines that:

(A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and

(B) the contract or agreement will be practical and effective;

(j) take any necessary enforcement action authorized under this part, including filing a lien against the real property, which is subject to cleanup and is owned by a responsible party, for the costs of abatement, investigative and corrective actions taken by the agency, if necessary, and depositing any funds received into the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7;

(k) require an owner or operator of an underground storage tank to:

(i) furnish information or records relating to the tank, its equipment, and contents;

(ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or

(iii) provide access to the tank at reasonable times;

(l) take any abatement, investigative, or corrective action as authorized in this part; or

(m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.

Amended by Chapter 227, 2014 General Session

19-6-405.5. Creation of restricted account.

(1) There is created in the General Fund a restricted account known as the Petroleum Storage Tank Restricted Account.

(2) All penalties and interest imposed under this part shall be deposited in this account, except as provided in Section 19-6-410.5. Specified program funds under this part that are unexpended at the end of the fiscal year lapse into this account.

(3) The Legislature shall appropriate the money in the account to the department for the costs of administering the petroleum storage tank program under this part.

Amended by Chapter 95, 1998 General Session

19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.

(1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.

(2) The cleanup fund sources of revenue are:

(a) any voluntary contributions received by the department for the cleanup of facilities;

(b) legislative appropriations made to the cleanup fund; and

(c) costs recovered under this part.

(3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

(4) The director may use the cleanup fund money for administration, investigation, abatement action, and preparing and implementing a corrective action plan regarding releases and suspected releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

Amended by Chapter 227, 2014 General Session

19-6-407. Underground storage tank registration -- Change of ownership or operation -- Civil penalty.

(1) (a) Each owner or operator of an underground storage tank shall register the tank with the director if the tank:

- (i) is in use; or
- (ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the executive secretary of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the director of the completed installation within 60 days following the installation of an underground storage tank.

(2) The director may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1).

(3) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

Amended by Chapter 360, 2012 General Session

19-6-408. Underground storage tank registration fee -- Processing fee for tanks not in the program.

(1) The department may assess an annual underground storage tank registration fee against an owner or operator of an underground storage tank that has not been closed. These fees shall be:

- (a) billed per facility;
- (b) due on July 1 annually;
- (c) deposited with the department as dedicated credits;
- (d) used by the department for the administration of the underground storage tank program outlined in this part; and
- (e) established under Section 63J-1-504.

(2) (a) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(b) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee established under Section 63J-1-504.

(c) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2)(b) shall be paid for each document submitted.

(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The director shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.

(5) (a) The director may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The director may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

Amended by Chapter 227, 2014 General Session

19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees paid under Section 19-6-411;

(ii) underground storage tank installation company permit fees paid under Section 19-6-411;

(iii) the environmental assurance fee and penalties paid under Section 19-6-410.5;

(iv) appropriations to the fund;

(v) principal and interest received from the repayment of loans made by the director under Subsection (5); and

(vi) interest accrued on revenues listed in this Subsection (1)(b).

(c) Interest earned on fund money is deposited into the fund.

(2) The director may expend money from the fund to pay costs:

(a) covered by the fund under Section 19-6-419;

(b) of administering the:

(i) fund; and

(ii) environmental assurance program and fee under Section 19-6-410.5;

(c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgment, award, or settlement for bodily injury or property damage to a third party;

(d) incurred by the executive director in determining the actuarial soundness of the fund;

(e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified underground storage tank consultant:

(i) to review an investigation or corrective action by a responsible party; and

(ii) in accordance with Subsection (4);

(f) incurred by the department to implement the study described in Subsection

19-6-410.5(8), including a one-time cost of up to \$200,000 for the actuarial study described in Subsection 19-6-410.5(8)(a)(ii); and

(g) allowed under this part that are not listed under this Subsection (2).

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

(4) The director shall:

(a) in paying costs under Subsection (2)(e):

(i) determine a reasonable limit on costs paid based on the:

(A) extent of the release;

(B) impact of the release; and

(C) services provided by the certified underground storage tank consultant;

(ii) pay, per release, costs for one certified underground storage tank consultant agreed to by all third parties claiming damages or injury;

(iii) include costs paid in the coverage limits allowed under Section 19-6-419; and

(iv) not pay legal costs of third parties;

(b) review and give careful consideration to reports and recommendations provided by a certified underground storage tank consultant hired by a third party; and

(c) make reports and recommendations provided under Subsection (4)(b) available on the Division of Environmental Response and Remediation's website.

(5) The director may loan, in accordance with this section, money available in the fund to a person to be used for:

(a) upgrading an underground storage tank;

(b) replacing an underground storage tank; or

(c) permanently closing an underground storage tank.

(6) A person may apply to the director for a loan under Subsection (5) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the fund.

(7) The director shall consider loan applications under Subsection (6) to meet the following objectives:

(a) support availability of gasoline in rural parts of the state;

(b) support small businesses; and

(c) reduce the threat of a petroleum release endangering the environment.

(8) (a) A loan made under this section may not be for more than:

(i) \$150,000 for all tanks at any one facility;

(ii) \$50,000 per tank; and

(iii) 80% of the total cost of:

(A) upgrading an underground storage tank;

(B) replacing an underground storage tank; or

(C) permanently closing an underground storage tank.

(b) A loan made under this section shall:

(i) have a fixed annual interest rate of 0%;

(ii) have a term no longer than 10 years;

(iii) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (9); and

(iv) comply with rules made by the board under Subsection (9).

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

- (a) form, content, and procedure for a loan application;
 - (b) criteria and procedures for prioritizing a loan application;
 - (c) requirements and procedures for securing a loan;
 - (d) procedures for making a loan;
 - (e) procedures for administering and ensuring repayment of a loan, including late payment penalties;
 - (f) procedures for recovering on a defaulted loan; and
 - (g) the maximum amount of the fund that may be used for loans.
- (10) A decision by the director to loan money from the fund and otherwise administer the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.
- (11) The Legislature shall appropriate money from the fund to the department for the administration costs associated with making loans under this section.
- (12) The director may enter into an agreement with a public entity or private organization to perform a task associated with administration of loans made under this section.

Amended by Chapter 227, 2014 General Session

19-6-410.5 (Superseded 01/01/15). Environmental Assurance Program -- Participant fee -- State Tax Commission administration, collection, and enforcement of tax.

- (1) As used in this section:
 - (a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the executive director.
 - (b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.
- (2) (a) There is created an Environmental Assurance Program.
 - (b) The program shall provide to a participating owner or operator, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.
- (3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.
 - (b) An owner or operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum underground storage tanks that the owner or operator owns or operates.
- (4) (a) There is assessed an environmental assurance fee of 1/2 cent per gallon on the first sale or use of petroleum products in the state.
 - (b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.
- (5) (a) The commission shall administer, collect, and enforce the fee imposed under this section according to the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:
 - (i) Title 59, Chapter 1, General Taxation Policies; and
 - (ii) Title 59, Chapter 12, Part 1, Tax Collection.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:

- (i) the method of payment of the environmental assurance fee;
- (ii) the procedure for reimbursement or exemption of an owner or operator that does not participate in the program, including an owner or operator of an above ground storage tank; and
- (iii) the procedure for confirming with the department that an owner or operator qualifies for reimbursement or exemption under Subsection (5)(b)(ii).

(c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to the commission of rendering its services.

(6) (a) The person responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:

- (i) complete and submit the form prescribed by the commission; and
- (ii) pay the fee to the commission.

(b) (i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.

(c) The commission shall report to the department a person who is delinquent in payment of the fee under this section.

(7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds \$30,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

(ii) The reduction under this Subsection (7)(a) remains in effect until modified by the Legislature in a general or special session.

(b) The commission shall determine the cash balance of the fund each year as of June 30.

(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.

(8) The department shall:

(a) (i) study the adverse selection of participants in the program and the actuarial deficit of the fund;

(ii) obtain an actuarial study and related consultation that provides the necessary calculations to minimize adverse selection in the program and the actuarial deficit of the fund;

(iii) develop a risk characterization profile for participants in the program and recommend a fee schedule based on fair market rates;

(iv) develop a strategy to reduce the negative equity balance of the fund and, based on the fee schedule described in Subsection (8)(a)(iii), a corresponding time schedule showing an actuarial reduction in the negative equity balance of the fund; and

(v) identify and study other adverse impacts to the program and the fund; and

(b) based on the information obtained and developed under Subsection (8)(a), prepare a recommendation to implement a strategy to minimize adverse selection of participants in the program and eliminate or reduce the actuarial deficit of the fund.

(9) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee before December 31, 2013, regarding:

(a) the information obtained and developed under Subsection (8)(a); and

(b) the recommendation prepared under Subsection (8)(b).

Amended by Chapter 286, 2013 General Session

19-6-411. Petroleum storage tank fee for program participants.

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:

(a) an annual fee of:

(i) \$450 for each tank in a facility with an annual facility throughput rate of 70,000 gallons or less;

(ii) \$150 for each tank in a facility with an annual facility throughput rate of greater than 70,000 gallons; and

(iii) \$450 for each tank in a facility regarding which:

(A) the facility's throughput rate is not reported to the department within 30 days after the date this throughput information is requested by the department; or

(B) the owner or operator elects to pay the fee under this Subsection (1)(a)(iii), rather than report under Subsection (1)(a)(i) or (ii); and

(b) for any new tank:

(i) that is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and

(ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(a)(ii).

(2) (a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank installation company shall pay to the department the following fees to be deposited in the fund:

(i) an annual fee of:

(A) \$2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date; or

(B) \$4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date; and

(ii) \$200 for each underground storage tank installed in the state, to be paid prior to completion of installation.

(b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed.

(3) (a) Fees under Subsection (1) are due on or before July 1 annually.

(b) If the department does not receive the fee on or before July 1, the department shall impose a late penalty of \$60 per facility.

(c) (i) The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive payments for claims

against the fund lapses on the 61st day after July 1.

(iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3).

(4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1.

(b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed.

(c) The director may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.

(5) If the executive director determines that the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, the executive director may petition the Legislature to increase the petroleum storage tank and underground storage tank installation company permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The director may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(7) (a) The director shall issue a certificate of compliance to the owner or operator of a petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part.

(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of a petroleum storage tank or underground storage tank under Subsection (7)(a) that does not qualify for a certificate of compliance under this part.

Amended by Chapter 227, 2014 General Session

19-6-412. Petroleum storage tank -- Certificate of compliance.

(1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.

(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.

(2) The director shall issue a certificate of compliance if:

- (a) the owner or operator has a certificate of registration;
 - (b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;
 - (c) all state and federal statutes, rules, and regulations have been substantially complied with; and
 - (d) all tank test requirements of Section 19-6-413 have been met.
- (3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.
- (4) The director may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.
- (5) The director shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).
- (6) If the owner or operator electing to participate in the program has a number of tanks in an area where the director finds it would be difficult to accurately determine which of the tanks may be the source of a release, the owner may only elect to place all of the tanks in the area in the program, but not just some of the tanks in the area.

Amended by Chapter 360, 2012 General Session

19-6-413. Tank tightness test -- Actions required after testing.

- (1) The owner or operator of any petroleum storage tank registered before July 1, 1991, shall submit to the director the results of a tank tightness test conducted:
- (a) on or after September 1, 1989, and before January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or
 - (b) on or after January 1, 1990, and before July 1, 1991.
- (2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, shall submit to the director the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.
- (3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the director at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.
- (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:
- (i) correct the problem; and
 - (ii) submit evidence of the correction to the director.
- (b) When the director receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the director shall:
- (i) approve or disapprove the correction; and
 - (ii) notify the owner or operator that the correction has been approved or disapproved.
- (5) The director shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.
- (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to

perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

Amended by Chapter 360, 2012 General Session

19-6-414. Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.

(1) If the director determines that any of the requirements of Subsection 19-6-412(2), Section 19-6-413, or Subsection 19-6-420(2) have not been met, the director shall notify the owner or operator by certified mail that:

- (a) the owner or operator's certificate of compliance may be revoked;
- (b) if the owner or operator is participating in the program, the owner or operator is violating the eligibility requirements for the fund; and
- (c) the owner or operator shall demonstrate the owner or operator's compliance with this part within 60 days after receipt of the notification or the certificate of compliance will be revoked and if participating in the program the owner or operator will be ineligible to receive payment for claims against the fund.

(2) If the director determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the director shall send written notice to the owner or operator that the owner's or operator's certificate of compliance is revoked and he is no longer eligible for payment of costs from the fund.

(3) Revocation of certificates of compliance may be appealed to the executive director.

Amended by Chapter 227, 2014 General Session

19-6-415. Participation of exempt and above ground tanks.

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if it:

- (a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;
- (ii) is used for storing heating oil for consumptive use on the premises where stored; or
- (iii) is used for any oxygenate blending component for motor fuels;
- (b) complies with the requirements of Section 19-6-412;
- (c) meets other requirements established by rules made under Section 19-6-403; and
- (d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

(2) An above ground petroleum storage tank may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:

- (a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;
- (b) complies with the requirements of Section 19-6-412; and
- (c) meets other requirements established by rules made under Section 19-6-403.

Amended by Chapter 172, 1997 General Session

19-6-415.5. State-owned underground tanks to participate in program.

Any underground storage tank owned or leased by the state of Utah and subject to the financial assurance requirements established by division rule shall participate in the program.

Enacted by Chapter 172, 1997 General Session

19-6-416. Restrictions on delivery of petroleum -- Civil penalty.

(1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).

(2) Any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The director shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank or underground storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank or underground storage tank that is identified in compliance with Subsection 19-6-411(7) and rules made under that subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411.

Amended by Chapter 360, 2012 General Session

19-6-416.5. Restrictions on underground storage tank installation companies -- Civil penalty.

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank without having a valid underground storage tank installation company permit.

(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per underground storage tank.

(3) The director shall issue a notice of agency action assessing a civil penalty of \$500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1).

Amended by Chapter 360, 2012 General Session

19-6-417. Use of fund revenues to investigate certain releases from petroleum storage tank.

If the director is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund.

Amended by Chapter 360, 2012 General Session

19-6-418. Recovery of costs by director.

- (1) The director may recover:
 - (a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;
 - (b) any amount required to be paid by the owner under this part which the owner has not paid; and
 - (c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).
- (2) The director may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.
- (3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session

19-6-419. Costs covered by the fund -- Costs paid by owner or operator -- Payments to third parties -- Apportionment of costs.

- (1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release are covered as provided under this section.
- (2) For releases reported before May 11, 2010, the responsible party shall pay:
 - (a) the first \$10,000 of costs; and
 - (b) (i) all costs over \$1,000,000, if the release was from a tank:
 - (A) located at a facility engaged in petroleum production, refining, or marketing; or
 - (B) with an average monthly facility throughput of more than 10,000 gallons; and
 - (ii) all costs over \$500,000, if the release was from a tank:
 - (A) not located at a facility engaged in petroleum production, refining, or marketing; and
 - (B) with an average monthly facility throughput of 10,000 gallons or less.
- (3) For releases reported before May 11, 2010, if money is available in the fund and the responsible party has paid costs of \$10,000, the director shall pay costs from the fund in an amount not to exceed:
 - (a) \$990,000 if the release was from a tank:
 - (i) located at a facility engaged in petroleum production, refining, or marketing; or
 - (ii) with an average monthly facility throughput of more than 10,000 gallons; and
 - (b) \$490,000 if the release was from a tank:
 - (i) not located at a facility engaged in petroleum production, refining, or marketing; and
 - (ii) with an average monthly facility throughput of 10,000 gallons or less.
- (4) For a release reported on or after May 11, 2010, the responsible party shall pay:
 - (a) the first \$10,000 of costs; and
 - (b) (i) all costs over \$2,000,000, if the release was from a tank:
 - (A) located at a facility engaged in petroleum production, refining, or marketing; or
 - (B) with an average monthly facility throughput of more than 10,000 gallons; and
 - (ii) all costs over \$1,000,000, if the release was from a tank:
 - (A) not located at a facility engaged in petroleum production, refining, or marketing; and

- (B) with an average monthly facility throughput of 10,000 gallons or less.
- (5) For a release reported on or after May 11, 2010, if money is available in the fund and the responsible party has paid costs of \$10,000, the director shall pay costs from the fund in an amount not to exceed:
 - (a) \$1,990,000 if the release was from a tank:
 - (i) located at a facility engaged in petroleum production, refining, or marketing; or
 - (ii) with an average monthly facility throughput of more than 10,000 gallons; and
 - (b) \$990,000 if the release was from a tank:
 - (i) not located at a facility engaged in petroleum production, refining, or marketing; and
 - (ii) with an average monthly facility throughput of 10,000 gallons or less.
- (6) The director may pay fund money to a responsible party up to the following amounts in a fiscal year:
 - (a) \$1,990,000 to a responsible party owning or operating less than 100 petroleum storage tanks; or
 - (b) \$3,990,000 to a responsible party owning or operating 100 or more petroleum storage tanks.
- (7) (a) In authorizing payments for costs from the fund, the director shall apportion money:
 - (i) first, to the following type of expenses incurred by the state:
 - (A) legal;
 - (B) adjusting; and
 - (C) actuarial;
 - (ii) second, to costs incurred for:
 - (A) investigation;
 - (B) abatement action; and
 - (C) corrective action; and
 - (iii) third, to payment of:
 - (A) judgments;
 - (B) awards; and
 - (C) settlements to third parties for bodily injury or property damage.
- (b) The board shall make rules governing the apportionment of costs among third party claimants.

Amended by Chapter 360, 2012 General Session

19-6-420 (Superseded 07/01/15). Releases -- Abatement actions -- Corrective actions.

- (1) If the director determines that a release from a petroleum storage tank has occurred, he shall:
 - (a) identify and name as many of the responsible parties as reasonably possible; and
 - (b) determine which responsible parties, if any, are covered by the fund regarding the release in question.
- (2) Regardless of whether the tank generating the release is covered by the fund, the director may:
 - (a) order the owner or operator to take abatement, investigative, or corrective action,

including the submission of a corrective action plan; and

(b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the director, the director may take any one or more of the following actions:

(i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.

(3) (a) Subject to the limitations established in Section 19-6-419, the director shall provide money from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the director; and

(ii) the director approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the director that the abatement action was reasonable and timely in light of circumstances, the director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the director within 24 hours of the abatement action taken.

(4) (a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the director shall consider the following:

(i) the threat to public health;

(ii) the threat to the environment; and

(iii) the cost-effectiveness of alternative corrective actions.

(5) If the director approves the corrective action plan or develops his own corrective action plan, he shall:

(a) approve the estimated cost of implementing the corrective action plan;

(b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund money to be allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide money from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The director may not distribute any money from the fund for corrective action until the owner or operator obtains the director's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the director and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

- (i) the owner or operator submits the corrective action plan to the director within seven days after beginning corrective action; and
 - (ii) the director approves the corrective action plan.
- (7) If the director disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.
- (8) If the director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the director may:
- (a) develop his own corrective action plan; and
 - (b) act as authorized under Subsections (2) and (5).
- (9) (a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.
- (b) If the director determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

Amended by Chapter 360, 2012 General Session

19-6-421. Third party payment restrictions and requirements.

- (1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the director shall authorize payment from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:
- (a) (i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or
 - (ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and
 - (b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.
- (2) The director shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

Amended by Chapter 360, 2012 General Session

19-6-422. Participation by state risk manager in suit, claim, or settlement.

- (1) If a suit is filed or a claim is made against a responsible party who is eligible for payments from the fund for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the state risk manager and his legal counsel may participate with the responsible party and his legal counsel in:
- (a) the defense of any suit;
 - (b) determination of legal strategy and any other decisions affecting the defense of any suit; and
 - (c) any settlement negotiations.
- (2) The state risk manager shall approve any settlement between the responsible party and a third party before payment of fund money is made.

Amended by Chapter 214, 1992 General Session

19-6-423. Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.

(1) (a) The director may authorize payments from the fund to a responsible party if the responsible party receives actual or constructive notice:

- (i) of a release likely to give rise to a claim; or
- (ii) that in connection with a release a:
 - (A) suit has been filed; or
 - (B) claim has been made against the responsible party for:
 - (I) bodily injury; or
 - (II) property damage.

(b) A responsible party described in Subsection (1)(a) shall:

(i) inform the state risk manager immediately of a release, suit, or claim described in Subsection (1)(a);

(ii) allow the state risk manager and the state risk manager's legal counsel to participate with the responsible party and the responsible party's legal counsel in:

- (A) the defense of a suit;
- (B) determination of legal strategy;
- (C) other decisions affecting the defense of a suit; and
- (D) settlement negotiations; and
- (iii) conduct the defense of a suit or claim in good faith.

(2) The director may authorize payment of fund money for a judgment or award to third parties if the state risk manager:

(a) is allowed to participate in the defense of the suit as required under Subsection (1)(b); and

(b) approves the settlement.

(3) The director may make a payment from the fund to a third party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section 19-6-420 if the payment or funding does not impose a liability or make a payment for:

- (a) an obligation of a responsible party for:
 - (i) workers' compensation benefits;
 - (ii) disability benefits;
 - (iii) unemployment compensation; or
 - (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
- (b) a bodily injury award to:

(i) a responsible party's employee arising from and in the course of the employee's employment; or

(ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the employee described in Subsection (3)(b)(i);

(c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of an aircraft, motor vehicle, or watercraft;

(d) property damage to a property owned by, occupied by, rented to, loaned to, bailed to,

or otherwise in the care, custody, or control of a responsible party except to the extent necessary to complete a corrective action plan;

(e) bodily injury or property damage for which a responsible party is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless the responsible party entered into the contract or agreement to meet the financial responsibility requirements of:

(i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et seq., or regulations issued under this act; or

(ii) this part, or rules made under this part;

(f) bodily injury or property damage for which a responsible party is liable to a third party solely on account of personal injury to the third party's spouse;

(g) bodily injury, property damage, or the cost of corrective action caused by releases reported before May 11, 2010 that are covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:

(i) \$990,000 for a single release; and

(ii) for all releases by a responsible party in a fiscal year:

(A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

and

(B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks; and

(h) bodily injury, property damage, or the cost of corrective action caused by releases reported on or after May 11, 2010, covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:

(i) \$1,990,000 for a single release; and

(ii) for all releases by a responsible party in a fiscal year:

(A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

and

(B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

Amended by Chapter 360, 2012 General Session

19-6-424. Claims not covered by fund.

(1) The director may not authorize payments from the fund unless:

(a) the claim was based on a release occurring during a period for which that tank was covered by the fund;

(b) the claim was made:

(i) during a period for which that tank was covered by the fund; or

(ii) (A) within one year after that fund-covered tank is closed; or

(B) within six months after the end of the period during which the tank was covered by the fund; and

(c) there are sufficient revenues in the fund.

(2) The director may not authorize payments from the fund for an underground storage tank installation company unless:

(a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;

(b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and

(c) there are sufficient revenues in the fund.

(3) The director may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.

(4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the director may authorize payments from the fund as provided in this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

Amended by Chapter 360, 2012 General Session

19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the director may:

(a) issue written orders determining responsible parties;
(b) issue written orders apportioning liability among responsible parties; and
(c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.

(2) (a) In any apportionment of liability, whether made by the director or made in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove the responsible party's proportionate contribution, the court or the director shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).

(c) The court, the board, or the director may not impose joint and several liability.

(d) Each responsible party is strictly liable for his share of costs.

(3) The failure of the director to name all responsible parties is not a defense to an action under this section.

(4) The director may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.

(5) The director and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):

(a) have been notified in writing by either the director or the responsible party of the proposed agreement; and

(b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(6) (a) Any party who incurs costs under this part in excess of his liability may seek

contribution from any other party who is or may be liable under this part for the excess costs in the district court.

(b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).

(7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.

(b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.

(8) (a) If the director obtains less than complete relief from a party who has resolved his liability under this section, the director may bring an action against any party who has not resolved his liability as determined in an order.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.

(9) (a) An agreement or order determining liability under this part may provide that the director will pay for costs of actions that the parties have agreed to perform, but which the director has agreed to finance, under the terms of the agreement or order.

(b) If the director makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.

(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session

19-6-425. Violation of part -- Civil penalty -- Suit in district court.

(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than \$10,000 per day for each day of violation.

(2) The director may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located.

(3) The department shall deposit the penalties collected under this part in the Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

Amended by Chapter 360, 2012 General Session

19-6-426. Limitation of liability of state -- Liability of responsible parties -- Indemnification agreement involving responsible parties.

(1) This part is not intended to create an insurance program.

(2) The fund established in this part shall only provide funds to finance costs for responsible parties who meet the requirements of this part when releases from petroleum storage

tanks occur.

(3) The assets of the fund, if any, are the sole source of money to pay claims against the fund.

(4) The state is not liable for:

(a) any amounts payable from the fund for which the fund does not have sufficient assets;

(b) any expenses or debts of the fund; or

(c) any claim arising from the creation, management, rate-setting, or any other activity pertaining to the fund.

(5) The responsible parties are liable for any costs associated with any release from the underground storage tank system.

(6) This part does not preclude a responsible party from enforcing or recovering under any agreement or contract for indemnification associated with a release from the tank or from pursuing any other legal remedies that may be available against any party.

(7) If any payment is made under this part, the fund shall be subrogated to all the responsible parties' rights of recovery against any person or organization and the responsible parties shall execute and deliver instruments and papers and do whatever else is necessary to secure the rights. The responsible parties shall do nothing after a release is discovered to prejudice the rights. In the event of recovery by the fund, any amount recovered shall first be used to reimburse the responsible parties for costs they are required to pay pursuant to Section 19-6-419.

(8) Parties who elect to participate in the fund do so subject to the conditions and limitations in this section and in this part.

Amended by Chapter 172, 1997 General Session

19-6-427. Liability of any person under other laws -- Additional state and governmental immunity -- Exceptions.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:

(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or

(b) the liability of any person for costs incurred except as provided in this part.

(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

Amended by Chapter 382, 2008 General Session

19-6-428. Eligibility for participation in the fund.

(1) Subject to the requirements of Section 19-6-410.5, all owners and operators of existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying

the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.

(2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.

(3) (a) All owners and operators of petroleum storage tanks who elect to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:

(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;

(iii) provide the required tests and samples to the director; and

(iv) comply with the requirements of this part.

(b) A site check under Subsection (3)(a)(ii) is not required if the director determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.

(4) The director shall review the tests and samples provided under Subsection (3)(a)(iii) to determine:

(a) whether or not any release of the petroleum has occurred; or

(b) if the remediation is adequate.

Amended by Chapter 360, 2012 General Session

19-6-429. False information and claims.

(1) Any person who presents or causes to be presented any oral or written statement, knowing the statement contains false information, in order to obtain a certificate of compliance is guilty of a class B misdemeanor.

(2) (a) Any person who presents or causes to be presented any claim for payment from the fund, knowing the claim contains materially false information or knowing the claim is not eligible for payment from the fund, is subject to the criminal penalties under Section 76-10-1801 regarding fraud.

(b) The level of criminal penalty shall be determined by the value involved, in the same manner as in Section 76-10-1801.

Enacted by Chapter 172, 1997 General Session

19-6-501. Short title.

This part is known as the "Solid Waste Management Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-502. Definitions.

As used in this part:

(1) "Governing body" means the governing board, commission, or council of a public entity.

- (2) "Jurisdiction" means the area within the incorporated limits of:
- (a) a municipality;
 - (b) a special service district;
 - (c) a municipal-type service district;
 - (d) a service area; or
 - (e) the territorial area of a county not lying within a municipality.
- (3) "Long-term agreement" means an agreement or contract having a term of more than five years but less than 50 years.
- (4) "Municipal residential waste" means solid waste that is:
- (a) discarded or rejected at a residence within the public entity's jurisdiction; and
 - (b) collected at or near the residence by:
 - (i) a public entity; or
 - (ii) a person with whom the public entity has as an agreement to provide solid waste management.
- (5) "Public entity" means:
- (a) a county;
 - (b) a municipality;
 - (c) a special service district under Title 17D, Chapter 1, Special Service District Act;
 - (d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or
 - (e) a municipal-type service district created under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas.
- (6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that imposes a legal duty on a person.
- (7) "Residence" means an improvement to real property used or occupied as a primary or secondary detached single-family dwelling.
- (8) "Resource recovery" means the separation, extraction, recycling, or recovery of usable material, energy, fuel, or heat from solid waste and the disposition of it.
- (9) "Short-term agreement" means a contract or agreement having a term of five years or less.
- (10) (a) "Solid waste" means a putrescible or nonputrescible material or substance discarded or rejected as being spent, useless, worthless, or in excess of the owner's needs at the time of discard or rejection, including:
- (i) garbage;
 - (ii) refuse;
 - (iii) industrial and commercial waste;
 - (iv) sludge from an air or water control facility;
 - (v) rubbish;
 - (vi) ash;
 - (vii) contained gaseous material;
 - (viii) incinerator residue;
 - (ix) demolition and construction debris;
 - (x) a discarded automobile; and
 - (xi) offal.
- (b) "Solid waste" does not include sewage or another highly diluted water carried material or substance and those in gaseous form.

(11) "Solid waste management" means the purposeful and systematic collection, transportation, storage, processing, recovery, or disposal of solid waste.

(12) "Solid waste management facility" means a facility employed for solid waste management, including:

- (a) a transfer station;
- (b) a transport system;
- (c) a baling facility;
- (d) a landfill; and
- (e) a processing system, including:
 - (i) a resource recovery facility;
 - (ii) a facility for reducing solid waste volume;
 - (iii) a plant or facility for compacting, composting, or pyrolization of solid waste;
 - (iv) an incinerator;
 - (v) a solid waste disposal, reduction, or conversion facility;
 - (vi) a facility for resource recovery of energy consisting of:
 - (A) a facility for the production, transmission, distribution, and sale of heat and steam;
 - (B) a facility for the generation and sale of electric energy to a public utility,

municipality, or other public entity that owns and operates an electric power system on March 15, 1982; and

(C) a facility for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States; and

(vii) an auxiliary energy facility that is connected to a facility for resource recovery of energy as described in Subsection (12)(e)(vi), that:

(A) is fueled by natural gas, landfill gas, or both;

(B) consists of a facility for the production, transmission, distribution, and sale of supplemental heat and steam to meet all or a portion of the heat and steam requirements of a military installation of the United States; and

(C) consists of a facility for the generation, transmission, distribution, and sale of electric energy to a public utility, a municipality described in Subsection (12)(e)(vi)(B), or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

Amended by Chapter 183, 2014 General Session

19-6-502.5. Solid waste management facility not a public utility.

A solid waste management facility is not a public utility as defined in Section 54-2-1.

Enacted by Chapter 89, 2008 General Session

19-6-503. Powers and duties of public entities.

(1) Subject to the powers and rules of the department and except as provided by Section 19-6-507, a governing body of a public entity may:

(a) supervise and regulate the collection, transportation, and disposition of solid waste generated within its jurisdiction;

(b) provide a solid waste management facility to adequately handle solid waste generated or existing within or without its jurisdiction;

(c) assume, by agreement, responsibility for the collection and disposition of solid waste whether generated within or without its jurisdiction;

(d) enter into a short or long-term interlocal agreement to provide for or operate a solid waste management facility with:

(i) another public entity;

(ii) a public agency, as defined in Section 11-13-103;

(iii) a private person; or

(iv) a combination of persons listed in Subsections (1)(d)(i) through (iii);

(e) levy and collect a tax, fee, or charge or require a license as may be appropriate to discharge its responsibility for the acquisition, construction, operation, maintenance, and improvement of a solid waste management facility, including licensing a private collector operating within its jurisdiction;

(f) require that solid waste generated within its jurisdiction be delivered to a solid waste management facility;

(g) control the right to collect, transport, and dispose of solid waste generated within its jurisdiction;

(h) agree that, according to Section 19-6-505, the exclusive right to collect, transport, and dispose of solid waste within its jurisdiction may be assumed by:

(i) another public entity;

(ii) a private person; or

(iii) a combination of persons listed in Subsections (1)(h)(i) through (ii);

(i) accept and disburse funds derived from a federal or state grant, a private source, or money that may be appropriated by the Legislature for the acquisition, construction, ownership, operation, maintenance, and improvement of a solid waste management facility;

(j) contract for the lease or purchase of land, a facility, or a vehicle for the operation of a solid waste management facility;

(k) establish one or more policies for the operation of a solid waste management facility, including:

(i) hours of operation;

(ii) character and kind of wastes accepted at a disposal site; and

(iii) another policy necessary for the safety of the operating personnel;

(l) sell or contract for the sale, according to a short or long-term agreement, of usable material, energy, fuel, or heat separated, extracted, recycled, or recovered from solid waste in a solid waste management facility, on terms in its best interest;

(m) pledge, assign, or otherwise convey as security for the payment of bonds, revenues and receipts derived from the sale or contract or from the operation and ownership of a solid waste management facility or an interest in it;

(n) issue a bond according to Title 11, Chapter 14, Local Government Bonding Act;

(o) issue industrial development revenue bonds according to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing a project consisting of a solid waste management facility on behalf of an entity that constitutes the users of a solid waste management facility project within the meaning of Section 11-17-2;

(p) agree to construct and operate or to provide for the construction and operation of a solid waste management facility project, which project manages the solid waste of a public entity or private person, according to one or more contracts and other arrangements provided for in a

proceeding according to which a bond is issued; and

(q) issue a bond to pay the cost of establishing reserves to pay principal and interest on the bonds as provided for in the proceedings according to which the bonds are issued.

(2) The power to issue a bond under this section is in addition to the power to issue a bond under Title 11, Chapter 17, Utah Industrial Facilities and Development Act.

Amended by Chapter 89, 2008 General Session

19-6-505. Long-term agreements for joint action -- Construction, acquisition, or sale of interest in management facilities -- Issuance of bonds.

(1) (a) Two or more public entities, which for the purposes of this section shall only include any political subdivision of the state, the state and its agencies, and the United States and its agencies, may enter into long-term agreements with one another pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and any one or more public entities may enter into long-term agreements with any private entity or entities for joint or cooperative action related to the acquisition, construction, ownership, operation, maintenance, and improvement of solid waste management facilities, regardless of whether the facilities are owned or leased by a public entity or entities, private entity or entities, or combination of them and pursuant to which solid waste of one or more public entities, any private entity or entities, or combination of them, are made available for solid waste management pursuant to the terms, conditions, and consideration provided in the agreement.

(b) Any payments made by a public entity for services received under the agreement are not an indebtedness of the public entity within the meaning of any constitutional or statutory restriction, and no election is necessary for the authorization of the agreement.

(c) Any public entity or any public entity in combination with a private entity agreeing to make solid waste management facilities available may, in the agreement, agree to make available to other public entities a specified portion of the capacity of the solid waste management facilities, without regard to its future need of the specified capacity for its own use and may in the agreement agree to increase the capacity of its solid waste management facilities from time to time, as necessary, in order to take care of its own needs and to perform its obligations to the other parties to the agreement.

(2) (a) Two or more public entities or any one or more public entities together with any private entity or entities may construct or otherwise acquire joint interests in solid waste management facilities, or any part of them, for their common use, or may sell to any other public or private entity or entities a partial interest or interests in its solid waste management facility.

(b) Any public entity otherwise qualifying under Title 11, Chapter 14, Local Government Bonding Act or Title 11, Chapter 17, Utah Industrial Facilities and Development Act may issue its bonds pursuant to these acts for the purpose of acquiring a joint interest in solid waste management facilities, or any part thereof, whether the joint interest is to be acquired through construction of new facilities or the purchase of an interest in existing facilities.

Amended by Chapter 105, 2005 General Session

19-6-506. Schedule of fees -- Classification of property -- Collection of delinquent fees.

(1) (a) The governing body of any public entity may by ordinance or resolution establish a schedule of fees to be imposed and assessed on property within its jurisdiction the revenue from which shall be used for solid waste purposes.

(b) In establishing a schedule of fees, the governing body shall classify the property within its jurisdiction based upon the character and volume of waste occurring from the various property uses subject to this part.

(c) If the governing body makes solid waste facilities available to a public entity as provided in Section 19-6-505, it shall charge a fee to that public entity, calculated in the same way as fees assessed on property within the jurisdiction of the governing body.

(2) (a) The governing body may impose, assess, and collect a reasonable fee for each classification of property established and divide the property within its jurisdiction according to the classifications.

(b) It may also establish classifications of property for which services may be provided for no fee or a reduced fee and determine the eligibility requirements for inclusion in the classifications upon application by property owners on a case-by-case basis.

(c) The governing body shall impose and assess the appropriate fee established for each classification and division of property by ordinance or resolution, and provide therein for the billing and collection of the fees on an annual or more frequent basis as it shall determine to be necessary or appropriate.

(d) The ordinance or resolution may provide that the fees imposed and assessed may be billed and collected by the county treasurer as a part of the regular, ad valorem property tax notice, billing, and collection system of the county, if it is feasible to do so, unless the public entity imposing and assessing the fees has an existing service or utility billing and collection system which can be used for this purpose.

(3) County treasurers may include the fees certified to them pursuant to this part on the general, ad valorem tax notice and collect and remit the fees in the manner and as a part of the tax collection system including the collection of delinquent fees in the manner provided by law for tax delinquencies.

(4) Any governing body which uses the general property tax billing and collection system of a county to bill and collect the fees imposed and assessed under this part shall reimburse the county for the actual costs thereof annually, which costs include the materials, equipment, and supplies used and the labor involved plus a factor added for overhead and general and administrative expenses.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-507. Flow control for solid waste prohibited -- Exceptions.

(1) Except as provided in Subsection (2), a public entity may not require solid waste discarded or rejected within the public entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility owned or operated by a public entity.

(2) A public entity may require solid waste discarded or rejected within the public entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility owned or operated by a public entity if:

(a) the solid waste is municipal residential waste;

(b) no more than one landfill that may take the solid waste exists within:

- (i) the public entity's jurisdiction; and
- (ii) 125 miles outside the public entity's jurisdiction, as measured from the landfill's primary entrance by following the shortest route of ordinary travel by motor vehicle; or
- (c) the solid waste management facility owned or operated by the public entity receives less than 75 tons of solid waste per day.
- (3) A requirement described in Subsection (1) that is:
 - (a) in effect on January 1, 2008 is void as of January 1, 2013; and
 - (b) adopted on or after January 2, 2008 and in effect on May 4, 2008 is void as of May 5, 2008.
- (4) A person engaged in solid waste management that is aggrieved by a violation of this section may seek judicial review of the violation in a court of competent jurisdiction.

Enacted by Chapter 89, 2008 General Session

19-6-601. Definitions.

As used in this part:

- (1) "Board" means the Solid and Hazardous Waste Control Board appointed under Title 19, Chapter 6, Hazardous Substances.
- (2) "Director" means the director of the Division of Solid and Hazardous Waste.

Amended by Chapter 360, 2012 General Session

19-6-602. Lead acid batteries -- Disposal limitations.

- (1) A person may not place, discard, or otherwise dispose of a lead acid battery in any solid waste treatment, storage, or disposal facility operated by a municipality, county, other political subdivision, or other entity. All lead acid batteries shall be disposed of by delivery to:
 - (a) a lead acid battery retailer as provided in Section 19-6-603;
 - (b) a lead acid battery wholesaler;
 - (c) a collection or recycling facility; or
 - (d) a secondary lead smelter that meets state and federal permit requirements.
- (2) (a) Lead acid batteries shall be removed from vehicles prior to crushing or shredding.
- (b) The removed lead acid batteries shall be disposed of in accordance with this part.

Renumbered and Amended by Chapter 112, 1991 General Session

Enacted by Chapter 122, 1991 General Session

19-6-603. Collection for recycling.

- (1) A person selling lead acid batteries at retail shall at the point of sale accept a customer's used lead acid battery and a maximum of one additional used lead acid battery when the customer purchases a new lead acid battery.
- (2) A person selling lead acid batteries at wholesale shall at the point of sale accept a customer's used lead acid batteries.
- (3) (a) A person selling lead acid batteries at retail shall post on the premises a clearly legible notice that is at least 8 1/2 inches by 11 inches in size and visible to customers that states: "It is illegal under state law to discard a motor vehicle battery or other lead acid battery. You

must recycle your used battery. State law requires us to accept up to two of your used lead acid batteries for recycling when you purchase a new lead acid battery.

"You may take lead acid batteries for recycling to (the retailer shall insert the name and address of at least one facility under Subsection 19-6-602(1)(b), (c), or (d) that is near the retailer)."

(b) A person selling lead acid batteries wholesale shall post on the premises a clearly legible notice that is at least 8 1/2 inches by 11 inches in size and visible to customers that states: "It is illegal under state law to discard a motor vehicle battery or other lead acid battery. You must recycle your used battery. State law requires us to accept your used lead acid battery for recycling, including when you purchase a new lead acid battery."

(4) Lead acid batteries that a lead acid battery retailer is not required to accept under this section shall be disposed of only at facilities listed under Subsections 19-6-602(1)(b), (c), or (d).

Renumbered and Amended by Chapter 112, 1991 General Session

Enacted by Chapter 122, 1991 General Session

19-6-604. Disposal by battery retailer.

(1) A lead acid battery retailer may not dispose of a used lead acid battery except by delivery to:

- (a) a lead acid battery wholesaler;
- (b) a lead acid battery manufacturer for delivery to a secondary lead smelter that meets state and federal permit requirements;
- (c) a collection or recycling facility; or
- (d) a secondary lead smelter that meets state and federal permit requirements.

(2) Removal or disposal of acid or other contents from lead acid batteries shall be done only in accordance with board rules.

(3) A lead acid battery retailer shall ensure removal of lead acid batteries received under Section 19-6-602 or 19-6-603 from the retail collection point.

Renumbered and Amended by Chapter 112, 1991 General Session

Enacted by Chapter 122, 1991 General Session

19-6-605. Disposal by battery wholesaler.

(1) A person selling lead acid batteries at wholesale may not dispose of a used lead acid battery except by delivery to:

- (a) a battery manufacturer for delivery to a secondary lead smelter that meets the state and federal permit requirements;
- (b) a collection or recycling facility; or
- (c) a secondary lead smelter that meets the state and federal permit requirements.

(2) The wholesale lead acid battery distributor shall ensure removal of batteries received under Section 19-6-602 or 19-6-604 from the wholesale collection point.

Renumbered and Amended by Chapter 112, 1991 General Session

Enacted by Chapter 122, 1991 General Session

19-6-606. Enforcement.

(1) The director may authorize inspections under Section 19-6-107 of any place, building, or premise where lead acid batteries are sold to determine compliance with this part. The director may authorize inspections under this subsection only as funding is available within the department's current budget.

(2) Local health departments established under Title 26A, Local Health Authorities, may enforce the provisions of this part.

Amended by Chapter 360, 2012 General Session

19-6-607. Penalty.

(1) A violation of this part is a class B misdemeanor.

(2) Each lead acid battery improperly disposed of or rejected by a lead acid battery wholesaler or retailer in violation of Section 19-6-603, 19-6-604, or 19-6-605 is a separate violation.

Amended by Chapter 79, 1996 General Session

19-6-701. Short title.

This act is known as the "Used Oil Management Act."

Enacted by Chapter 283, 1993 General Session

19-6-702. Legislative findings.

(1) The Legislature finds millions of gallons of used oil are generated each year in Utah, and this oil is:

(a) a valuable petroleum resource that can be recycled; and
(b) in spite of the potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means that pollute the water, land, and air, and endanger the public health, safety, and welfare.

(2) The Legislature finds used oil should be collected, treated, and reused in a manner that conserves energy and does not present a hazard to public health or the environment.

(3) The Legislature finds in light of the harmful consequences that can result from the improper disposal and use of used oil, and its value as a resource, the collection, recycling, and reuse of used oil is in the public interest.

Enacted by Chapter 283, 1993 General Session

19-6-703. Definitions.

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Commission" means the State Tax Commission.

(3) "Department" means the Department of Environmental Quality created in Title 19, Chapter 1, General Provisions.

(4) "Director" means the director of the Division of Solid and Hazardous Waste.

(5) "Division" means the Division of Solid and Hazardous Waste, created in Subsection

19-1-105(1)(e).

(6) "DIY" means do it yourself.

(7) "DIYer" means a person who generates used oil through household activities, including maintenance of personal vehicles.

(8) "DIYer used oil" means used oil a person generates through household activities, including maintenance of personal vehicles.

(9) "DIYer used oil collection center" means any site or facility that accepts or aggregates and stores used oil collected only from DIYers.

(10) "Hazardous waste" means any substance defined as hazardous waste under Title 19, Chapter 6, Hazardous Substances.

(11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

(12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil in Utah.

(13) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of used oil during its transportation from the point of collection to the point of storage, processing, use, or disposal.

(14) "Off-specification used oil" means used oil that exceeds levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(15) "On-specification used oil" means used oil that does not exceed levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(16) (a) "Processing" means chemical or physical operations under Subsection (16)(b) designed to produce from used oil, or to make used oil more amenable for production of:

(i) gasoline, diesel, and other petroleum derived fuels;

(ii) lubricants; or

(iii) other products derived from used oil.

(b) "Processing" includes:

(i) blending used oil with virgin petroleum products;

(ii) blending used oils to meet fuel specifications;

(iii) filtration;

(iv) simple distillation;

(v) chemical or physical separation; and

(vi) rerefining.

(17) "Recycled oil" means oil reused for any purpose following its original use, including:

(a) the purpose for which the oil was originally used; and

(b) used oil processed or burned for energy recovery.

(18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition varies with column operation and feedstock.

(19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities.

(20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates,

or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons.

(b) A used oil aggregation point may also accept oil from DIYers.

(21) "Used oil burner" means a person who burns used oil for energy recovery.

(22) "Used oil collection center" means any site or facility registered with the state to manage used oil and that accepts or aggregates and stores used oil collected from used oil generators, other than DIYers, who are regulated under this part and bring used oil to the collection center in shipments of no more than 55 gallons and under the provisions of this part. Used oil collection centers may accept DIYer used oil also.

(23) "Used oil fuel marketer" means any person who:

(a) directs a shipment of off-specification used oil from its facility to a used oil burner; or
(b) first claims the used oil to be burned for energy recovery meets the used oil fuel specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil is to be burned in accordance with rules for on-site burning in space heaters in accordance with 40 CFR 279.

(24) "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(25) "Used oil handler" means a person generating used oil, collecting used oil, transporting used oil, operating a transfer facility or aggregation point, processing or rerefining used oil, or marketing used oil.

(26) "Used oil processor or rerefiner" means a facility that processes used oil.

(27) "Used oil transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days.

(28) (a) "Used oil transporter" means the following persons unless they are exempted under Subsection (28)(b):

(i) any person who transports used oil;
(ii) any person who collects used oil from more than one generator and transports the collected oil;

(iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who transports collected DIYer used oil from used oil generators, collection centers, aggregation points, or other facilities required to be permitted or registered under this part and where household DIYer used oil is collected; and

(iv) owners and operators of used oil transfer facilities.

(b) "Used oil transporter" does not include:

(i) persons who transport oil on site;
(ii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

(iii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as allowed under 40 CFR 279.24, Off-site Shipments;

(iv) persons who transport used oil generated by DIYers from the initial generator to a used oil generator, used oil collection center, used oil aggregation point, used oil processor or rerefiner, or used oil burner subject to permitting or registration under this part; or

(v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform Safety Act.

Amended by Chapter 360, 2012 General Session

19-6-704. Powers and duties of the board.

(1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil under 40 CFR 279. For these purposes the board shall:

(a) establish by rule conditions and procedures for registration and revocation of registration as a used oil collection center, used oil aggregation point, or DIYer used oil collection center;

(b) provide by rule that used oil aggregation points that do not accept DIYer used oil are required to comply with used oil collection standards under this part, but are not required to be permitted or registered;

(c) establish by rule conditions and fees required to obtain permits and operate as used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel marketers;

(d) establish by rule the amount of liability insurance or other financial responsibility the applicant shall have to qualify for a permit under Subsection (1)(c);

(e) establish by rule the form and amount of reclamation surety required for reclamation of any site or facility required to be permitted under this part;

(f) establish by rule standards for tracking, analysis, and recordkeeping regarding used oil subject to regulation under this part, including:

(i) manifests for handling and transferring used oil;

(ii) analyses necessary to determine if used oil is on-specification or off-specification;

(iii) records documenting date, quantities, and character of used oil transported, processed, transferred, or sold;

(iv) records documenting persons between whom transactions under this subsection occurred; and

(v) exemption of DIYer used oil collection centers from this subsection except as necessary to verify volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number;

(g) authorize inspections and audits of facilities, centers, and operations subject to regulation under this part;

(h) establish by rule standards for:

(i) used oil generators;

(ii) used oil collection centers;

(iii) DIYer used oil collection centers;

(iv) aggregation points;

(v) curbside used oil collection programs;

(vi) used oil transporters;

(vii) used oil transfer facilities;

- (viii) used oil burners;
 - (ix) used oil processors and rerefiners; and
 - (x) used oil marketers;
 - (i) establish by rule standards for determining on-specification and off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable presumptions;
 - (j) establish by rule standards for closure, remediation, and response to releases involving used oil; and
 - (k) establish a public education program to promote used oil recycling and use of used oil collection centers.
- (2) The board may:
- (a) hold a hearing that is not an adjudicative proceeding relating to any aspect of or matter in the administration of this part;
 - (b) require retention and submission of records required under this part; or
 - (c) require audits of records and recordkeeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the commission under Section 19-6-716.

Amended by Chapter 360, 2012 General Session

19-6-705. Powers and duties of the director

- (1) The director shall:
- (a) administer and enforce the rules and orders of the board;
 - (b) issue and revoke registration numbers for DIYer used oil collection centers and used oil collection centers;
 - (c) after public notice and opportunity for a public hearing:
 - (i) issue or modify a permit under this part;
 - (ii) deny a permit when the director finds the application is not complete; and
 - (iii) revoke a permit issued under this section upon a finding the permit holder has failed to ensure compliance with this part;
 - (d) (i) coordinate with federal, state, and local government, and other agencies, including entering into memoranda of understanding, to ensure effective regulation of used oil under this part, minimize duplication of regulation, and encourage responsible recycling of used oil; and
 - (ii) as the department finds appropriate to the implementation of this part, enter into contracts with local health departments to carry out specified functions under this part and be reimbursed by the department in accordance with the contract;
 - (e) require forms, analyses, documents, maps, and other records as the director finds necessary to permit and inspect an operation regulated under this part;
 - (f) establish a toll-free telephone line to provide information to the public regarding management of used oil and locations of used oil collection centers; and
 - (g) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part.
- (2) The director may:

(a) authorize any employee of the division to enter any facility regulated under this part at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or sampling of the used oil site or facility, records, operations, or product;

(b) direct a person whose activities are regulated under this part to take samples for a stated purpose and cause them to be analyzed at that person's expense; and

(c) enforce board rules by issuing orders.

Amended by Chapter 360, 2012 General Session

19-6-706. Disposal of used oil -- Prohibitions.

(1) (a) Except as authorized by the director, or by rule of the board, or as exempted in this section, a person may not place, discard, or otherwise dispose of used oil:

(i) in any solid waste treatment, storage, or disposal facility operated by a political subdivision or a private entity, except as authorized for the disposal of used oil that is hazardous waste under state law;

(ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water; or

(iii) on the ground.

(b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i) is not guilty of a violation of this section.

(2) (a) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities under Subsection (1)(a)(i) if:

(i) to the extent reasonably possible all oil has been removed from the item or substance; and

(ii) no free flowing oil remains in the item or substance.

(b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with hazardous waste and the oil filter has been gravity hot-drained by one of the following methods:

(A) puncturing the filter antidrain back valve or the filter dome end and gravity hot-draining;

(B) gravity hot-draining and crushing;

(C) dismantling and gravity hot-draining; or

(D) any other equivalent gravity hot-draining method that will remove used oil from the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

(ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit.

(3) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(a) solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the director under this chapter; or

(b) any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under this part.

(4) (a) This section does not apply to releases to land or water of de minimis quantities of used oil, except:

(i) the release of de minimis quantities of used oil is subject to any regulation or prohibition under the authority of the department; and

(ii) the release of de minimis quantities of used oil is subject to any rule made by the board under this part prohibiting the release of de minimis quantities of used oil to the land or water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

(b) As used in this Subsection (4), "de minimis quantities of used oil:"

(i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; and

(ii) does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases.

(5) Used oil may not be used for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil in the environment, except in compliance with Section 19-6-711 and board rule.

(6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply to the director for an extension of time beyond that date to meet the requirements of this section.

(ii) The director may grant an extension of time beyond July 1, 1993, upon a finding of need under Subsection (6)(b) or (c).

(iii) The total of all extensions of time granted to one applicant under this Subsection (6)(a) may not extend beyond January 1, 1995.

(b) The director upon receipt of a request for an extension of time may request from the facility any information the director finds reasonably necessary to evaluate the need for an extension. This information may include:

(i) why the facility is unable to comply with the requirements of this section on or before July 1, 1993;

(ii) the processes or functions which prevent compliance on or before July 1, 1993;

(iii) measures the facility has taken and will take to achieve compliance; and

(iv) a proposed compliance schedule, including a proposed date for being in compliance with this section.

(c) Additional extensions of time may be granted by the director upon application by the facility and a showing by the facility that:

(i) the additional extension is reasonably necessary; and

(ii) the facility has made a diligent and good faith effort to comply with this section within the time frame of the prior extension.

Amended by Chapter 360, 2012 General Session

19-6-707. Rebuttable presumption regarding used oil mixtures.

(1) (a) Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D.

(b) This presumption may be rebutted by demonstrating the used oil does not contain hazardous waste, such as by using the analytical method from SW-846, Edition III, to show the used oil does not contain significant concentrations of halogenated hazardous constituents as listed by board rule.

(2) (a) The rebuttable presumption under Subsection (1) does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed through a tolling agreement

to reclaim the metalworking oils or fluids.

(b) The rebuttable presumption under Subsection (1) does apply to metalworking oils or fluids if the oils or fluids are recycled in any other manner or are disposed.

(3) (a) The rebuttable presumption under Subsection (1) does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units when the CFCs are destined for reclamation.

(b) The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

Enacted by Chapter 283, 1993 General Session

19-6-708. Registration and permit exemptions.

(1) The following persons are subject to Section 19-6-706, but are not subject to regulation as a registered or permitted site or facility under this part:

(a) generators of DIYer used oil; and

(b) farmers who generate in a calendar year an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm.

(2) The following are subject to rules made by the board as necessary to obtain and maintain primacy of the state used oil program under 40 C.F.R. 279, Standards for the Management of Used Oil, but are not subject to any other provision of this part:

(a) mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed, but prior to mixing, the used oil is subject to this part;

(b) used oil transporters and used oil burners conducting incidental processing operations that occur during the normal course of used oil management prior to transportation or burning;

(c) on-specification or off-specification used oil, after it is delivered, as documented by manifest, to a burner authorized to operate by the board or this part and rules made under this part;

(d) used oil burners authorized by the board to burn on-specification or off-specification used oil;

(e) used oil placed directly into a crude oil or natural gas pipeline, after the used oil is introduced into the pipeline;

(f) used oil generated on vessels due to normal shipboard operations is not subject to this part until it is transported ashore;

(g) rerefining distillation bottoms used as feedstock to manufacture asphalt products;

(h) materials reclaimed from used oil, used beneficially, and not burned for energy recovery or used in a manner constituting disposal;

(i) materials derived from used oil that are disposed of or used in a manner constituting disposal, but are subject to regulation under this chapter if the materials are identified as hazardous waste;

(j) wastewater containing a de minimis amount of used oil, as defined in Subsection (3);

(k) used oil contaminated with polychlorinated biphenyls (PCBs), if it is subject to regulation under 40 CFR 761, Toxic Substances Control Act;

(l) used oils that are a hazardous waste under this chapter and may not be recycled; and

(m) used oils that are not hazardous waste under this chapter and cannot be recycled

under this part.

(3) (a) As used in Subsection (2)(j), "de minimis quantities of used oil" means:

(i) small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; or

(ii) small amounts of oil lost to the wastewater treatment system or unit during washing or draining operations.

(b) "De minimis quantities of used oil" does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

Amended by Chapter 40, 1994 General Session

19-6-709. Reclamation of site or facility.

(1) The owner or operator of any of the following operations shall reclaim the site of the operation to a post-operations land use, as approved by the board in coordination with the department, when the operation ceases or the permit is revoked:

(a) DIYer used oil collection center;

(b) used oil collection center;

(c) used oil aggregation point;

(d) used oil transfer facility; or

(e) used oil processing or rerefining facility.

(2) DIYer used oil collection centers, used oil collection centers, and used oil aggregation points are not required to post a reclamation surety under this part, but are subject to the reclamation requirements of this section.

(3) Facilities and sites required to be permitted under this part shall post a reclamation surety in a form and amount required by board rule prior to issuance of a permit.

Enacted by Chapter 283, 1993 General Session

19-6-710. Registration and permitting of used oil handlers.

(1) (a) A person may not operate a DIYer used oil collection center or used oil collection center without holding a registration number issued by the director.

(b) The application for registration shall include the following information regarding the DIYer used oil collection center or used oil collection center:

(i) the name and address of the operator;

(ii) the location of the center;

(iii) whether the center will accept DIYer used oil;

(iv) the type of containment or storage to be used;

(v) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vi) emergency spill containment plan;

(vii) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting or storing the used oil, unless waived by the board; and

(viii) any other information the director finds necessary to ensure the safe handling of

used oil.

(c) The owner or operator of the center shall notify the director in writing of any changes in the information submitted to apply for registration within 20 days of the change.

(d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator of the DIYer used oil collection center shall maintain and submit to the director records of volumes of DIYer used oil picked up by a permitted used oil transporter, the dates of pickup, and the name and federal EPA identification number of the transporter.

(2) (a) A person may not act as a used oil transporter or operate a transfer facility without holding a permit issued by the director.

(b) The application for a permit shall include the following information regarding acting as a transporter or operating a transfer facility:

- (i) the name and address of the operator;
- (ii) the location of the transporter's base of operations or the location of the transfer facility;
- (iii) maps of all transfer facilities;
- (iv) the methods to be used for collecting, storing, and delivering used oil;
- (v) the methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;
- (vi) the type of containment or storage to be used;
- (vii) the methods of disposing of the waste by-products;
- (viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local government entities;
- (ix) emergency spill containment plan;
- (x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting, transporting, or storing the used oil;
- (xi) proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and
- (xii) any other information the director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(3) (a) A person may not operate a used oil processing or rerefining facility without holding a permit issued by the director.

(b) The application for a permit shall include the following information regarding the used oil processing or rerefining facility:

- (i) the name and address of the operator;
- (ii) the location of the facility;
- (iii) a map of the facility;
- (iv) methods to be used to determine if used oil is on-specification or off-specification;
- (v) the type of containment or storage to be used;
- (vi) the grades of oil to be produced;
- (vii) the methods of disposing of the waste by-products;
- (viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(ix) emergency spill containment plan;
(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;

(xi) proof of form and amount of reclamation surety; and
(xii) any other information the director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(4) (a) A person may not act as a used oil fuel marketer without holding a registration number issued by the director.

(b) The application for a registration number shall include the following information regarding acting as a used oil fuel marketer:

- (i) the name and address of the marketer;
- (ii) the location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits under this part;
- (iii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including any registrations or permits required under this part to collect, process, transport, or store used oil; and
- (iv) any other information the director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(5) (a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil for energy recovery without holding a permit issued by the director or an authorization from the department.

(b) The application for a permit shall include the following information regarding the used oil burning facility:

- (i) the name and address of the operator;
- (ii) the location of the facility;
- (iii) methods to be used to determine if used oil is on-specification or off-specification;
- (iv) the type of containment or storage to be used;
- (v) the type of burner to be used;
- (vi) the methods of disposing of the waste by-products;
- (vii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;
- (viii) emergency spill containment plan;
- (ix) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;
- (x) proof of form and amount of reclamation surety for any facility receiving and burning used oil; and
- (xi) any other information the director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the director in writing of any

changes in the information submitted to apply for a permit within 20 days of the change.

Amended by Chapter 360, 2012 General Session

19-6-711. Application of used oil to the land -- Limitations.

(1) A person may not apply used oil to the land as a dust or weed suppressant or for other similar applications to the land unless the person has obtained:

- (a) written authorization as required under this chapter; and
- (b) a permit from the director.

(2) The applicant for a permit under this section shall demonstrate:

- (a) the used oil is not mixed with any hazardous waste;
- (b) the used oil does not exhibit any hazardous characteristic other than ignitability; and
- (c) how the applicant will minimize the impact on the environment of the use of used oil as a dust or weed suppressant or for other similar applications to the land.

(3) Prior to acting on the application, the director shall provide public notice of the application and shall provide opportunity for public comment under Section 19-6-712.

Amended by Chapter 360, 2012 General Session

19-6-712. Issuance of permits -- Public comments and hearing.

(1) In considering permit applications under this part, the director shall:

- (a) ensure the application is complete prior to acting on it;
- (b) (i) publish notice of the permit application and the opportunity for public comment in:

- (A) a newspaper of general circulation in the state; and
- (B) a newspaper of general circulation in the county where the operation for which the application is submitted is located; and
- (ii) as required in Section 45-1-101;
- (c) allow the public to submit written comments to the director within 15 days after date of publication;
- (d) consider timely submitted public comments and the criteria established in this part and by rule in determining whether to grant the permit; and
- (e) send a written copy of the decision to the applicant and to persons submitting timely comments under Subsection (1)(c).

(2) The director's decision under this section may be appealed to the executive director as provided by rule.

Amended by Chapter 360, 2012 General Session

19-6-714. Recycling fee on sale of oil.

(1) On and after October 1, 1993, a recycling fee of \$.04 per quart or \$.16 per gallon is imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.

(2) A fee under this section may not be collected on sales of lubricating oil:

- (a) shipped outside the state;

(b) purchased in five-gallon or smaller containers and used solely in underground mining operations; or

(c) in bulk containers of 55 gallons or more.

(3) This fee is in addition to all other state, county, or municipal fees and taxes imposed on the sale of lubricating oil.

(4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply to this part.

(5) The commission may make rules to implement and enforce the provisions of this section.

Amended by Chapter 297, 2011 General Session

19-6-715. Recycling fee collection procedures.

(1) A lubricating oil vendor shall pay the fee collected under Section 19-6-714 to the commission:

(a) monthly on or before the last day of the month immediately following the last day of the previous month if:

(i) the lubricating oil vendor is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or

(ii) the lubricating oil vendor is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or

(b) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the lubricating oil vendor is required to file a sales and use tax return with the commission quarterly under Section 59-12-108.

(2) A lubricating oil vendor may retain a maximum of 2% of the recycling fee it collects under Section 19-6-714 for the costs of collecting the fee.

(3) The payment of the fee to the commission shall be accompanied by a form provided by the commission.

Amended by Chapter 309, 2011 General Session

19-6-716. Fee collection by commission -- Administrative charge.

(1) The commission shall administer, collect, and enforce the fee authorized under Section 19-6-714 pursuant to the same procedures used in the administration, collection, and enforcement of the sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1, General Taxation Policies.

(2) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a fee under Section 19-6-714.

Amended by Chapter 309, 2011 General Session

19-6-717. Used oil collection incentive payment.

(1) (a) The division shall pay a recycling incentive to registered DIYer used oil collection centers and curbside collection programs approved by the director for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a

permitted used oil transporter to a permitted used oil processor, rerefiner, burner, or to another disposal method authorized by board rule.

(b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

(2) The board shall by rule establish the amount of the payment, which shall be \$.16 per gallon unless the board determines the incentive should be:

(a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to reimburse all qualified operations under this section; or

(b) increased to promote collection of used oil under this part and the funds are available in the account created under Section 19-6-719 after meeting the priorities set in Section 19-6-720.

Amended by Chapter 360, 2012 General Session

19-6-718. Limitations on liability of operator of collection center.

(1) Subject to Subsection (2), a person may not recover from the owner, operator, or lessor of a DIYer used oil collection center any costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if the owner, operator, or lessor:

(a) operates the DIYer used oil collection center in compliance with this part and rules made under this part and the director upon inspection finds the center is in compliance with this part and rules made under this part;

(b) does not mix any used oil collected with any hazardous waste or PCBs or with any material that would render the resulting mixture as a hazardous waste;

(c) does not knowingly accept any used oil containing hazardous waste or PCBs;

(d) ensures the used oil is transported from the center by a permitted used oil transporter; and

(e) complies with Section 114(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(2) (a) This section applies only to that portion of a used oil collection center used for the collection of DIYer used oil under this part.

(b) This section does not apply to willful or grossly negligent activities of the owner, operator, or lessor in operating the DIYer used oil collection center.

(c) This section does not affect or modify in any way the obligations or liability of any person other than the owner, operator, or lessor under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous waste.

(d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil collection center may presume a quantity of not more than five gallons, except under Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a hazardous waste or PCBs if:

(i) the oil is accepted in accordance with the inspection and identification procedures required by board rule; and

(ii) the owner, operator, or lessor operates the DIYer used oil collection center in good faith and in compliance with this part and rules made under this part.

(e) The owner, operator, or lessor of a DIYer used oil collection center may claim the

presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than 55 gallons, if the quantity received is:

- (i) from a farmer exempted under Subsection 19-6-708(1)(b);
- (ii) generated by farming equipment; and
- (iii) handled in accordance with all requirements of this section.

(f) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a DIYer used oil collection center regarding that person's services or functions other than accepting DIYer used oil under this part.

Amended by Chapter 360, 2012 General Session

19-6-719. Used oil collection account.

There is created in the General Fund a restricted account known as the Used Oil Collection Administration Account. All money received by the state from the recycling fee placed on lubricating oil under this part, all permit fees, all penalties imposed under this part, and all money received as a grant or donation to be used for the administration of this part shall be placed in this account to be appropriated to the division for the management of DIYer used oil under this part subject to the priorities in Section 19-6-720.

Enacted by Chapter 283, 1993 General Session

19-6-720. Grants and donations -- Support for programs -- Priorities.

(1) The division may solicit or request and receive gifts, grants, donations, and other assistance from any source. Funds or resources received shall be deposited in the account created in Section 19-6-719 and shall be appropriated to the division for the management of DIYer used oil under this part subject to priorities set in Subsection (2).

(2) Appropriations received by the division shall be expended, as available, for the management of DIYer used oil under this part in the following order of priority:

- (a) first, division and board costs of implementation;
- (b) second, recycling incentive payments under Section 19-6-717;
- (c) third, public education programs;
- (d) fourth, awarding grants as funds are available for the establishment of the following, with emphasis on providing used oil collection facilities and programs in rural areas:
 - (i) used oil collection centers; and
 - (ii) curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of curbside collection programs; and
- (e) fifth, provide funding to local health departments for enforcement of the management of DIYer used oil under this part in coordination with the board.

(3) In awarding grants under Subsection (2)(d), the board shall work with governmental entities in areas of the state where used oil collection centers are limited or do not exist, or where public access to the centers is limited, to promote the establishment of DIYer used oil collection centers.

Enacted by Chapter 283, 1993 General Session

19-6-721. Violations -- Proceedings -- Orders.

(1) A person who violates any provision of this part or any order, permit, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than \$10,000 per day for each day of violation, in addition to any fine otherwise imposed for violation of this part.

(2) (a) The director may bring suit in the name of the state to restrain the person from continuing the violation and to require the person to perform necessary remediation.

(b) Suit under Subsection (2)(a) may be brought in any court in the state having jurisdiction in the county of residence of the person charged or in the county where the violation is alleged to have occurred.

(c) The court may grant prohibitory and mandatory injunctions, including temporary restraining orders.

(3) When the director finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures Act.

(4) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Amended by Chapter 360, 2012 General Session

19-6-722. Criminal penalties.

(1) A violation of any applicable provision of this part is a class A misdemeanor, except:

(a) any violation involving hazardous waste is governed by provisions of this chapter that address hazardous waste;

(b) any violation of Section 19-6-714 or 19-6-715 regarding the recycling fee is subject to penalties authorized under Section 19-6-716.

(2) Any person who knowingly conducts any activities identified in Subsection 19-6-113(3) regarding hazardous waste in conjunction with any operations under this part is subject to the enforcement actions and penalties identified in Subsection 19-6-113(4).

(3) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Amended by Chapter 271, 1998 General Session

19-6-723. Local ordinances regarding used oil.

Any political subdivision of the state may enact and enforce ordinances regarding the management of used oil that are consistent with this part.

Enacted by Chapter 283, 1993 General Session

19-6-801. Title.

This part is known as the "Waste Tire Recycling Act."

Renumbered and Amended by Chapter 51, 2000 General Session

19-6-802. Legislative findings.

(1) The Legislature finds that the disposal of waste tires is a matter of statewide concern and that recycling of waste tires should be promoted in light of the health and environmental benefits.

(2) The Legislature further finds that the recycling of waste tires will decrease the number of tires which are disposed of in landfills and will reduce the health and safety hazards posed by existing stockpiles of waste tires.

(3) It is the intent of the Legislature in adopting this part to encourage the development of the recycling industry and the development of markets for recycled products.

Renumbered and Amended by Chapter 51, 2000 General Session

19-6-803. Definitions.

As used in this part:

(1) "Abandoned waste tire pile" means a waste tire pile regarding which the local department of health has not been able to:

- (a) locate the persons responsible for the tire pile; or
- (b) cause the persons responsible for the tire pile to remove it.

(2) (a) "Beneficial use" means the use of chipped tires in a manner that is not recycling, storage, or disposal, but that serves as a replacement for another product or material for specific purposes.

(b) "Beneficial use" includes the use of chipped tires:

- (i) as daily landfill cover;
- (ii) for civil engineering purposes;
- (iii) as low-density, light-weight aggregate fill; or
- (iv) for septic or drain field construction.

(c) "Beneficial use" does not include the use of waste tires or material derived from waste tires:

- (i) in the construction of fences; or
- (ii) as fill, other than low-density, light-weight aggregate fill.

(3) "Board" means the Solid and Hazardous Waste Control Board created under Section 19-1-106.

(4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.

(5) "Commission" means the Utah State Tax Commission.

(6) (a) "Consumer" means a person who purchases a new tire to satisfy a direct need, rather than for resale.

(b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be rented or leased.

(7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98% wire free by weight.

(8) "Director" means the director of the Division of Solid and Hazardous Waste.

(9) "Disposal" means the deposit, dumping, or permanent placement of any waste tire in or on any land or in any water in the state.

(10) "Dispose of" means to deposit, dump, or permanently place any waste tire in or on any land or in any water in the state.

(11) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

(12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.

(13) "Landfill waste tire pile" means a waste tire pile:

(a) located within the permitted boundary of a landfill operated by a governmental entity; and

(b) consisting solely of waste tires brought to a landfill for disposal and diverted from the landfill waste stream to the waste tire pile.

(14) "Local health department" means the local health department, as defined in Section 26A-1-102, with jurisdiction over the recycler.

(15) "Materials derived from waste tires" means tire sections, tire chips, tire shreddings, rubber, steel, fabric, or other similar materials derived from waste tires.

(16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so the waste tires may be effectively disposed of by burial, such as in a landfill.

(17) "New motor vehicle" means a motor vehicle which has never been titled or registered.

(18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25 pounds of whole tires or material derived from waste tires is equal to one waste tire.

(19) "Proceeds of the fee" means the money collected by the commission from payment of the recycling fee including interest and penalties on delinquent payments.

(20) "Recycler" means a person who:

(a) annually uses, or can reasonably be expected within the next year to use, a minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in the state to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate product; and

(b) is registered as a recycler in accordance with Section 19-6-806.

(21) "Recycling fee" means the fee provided for in Section 19-6-805.

(22) "Shredded waste tires" means waste tires or material derived from waste tires that has been reduced to a six inch square or smaller.

(23) (a) "Storage" means the placement of waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Storage" does not include:

(i) the use of waste tires as ballast to maintain covers on agricultural materials or to maintain covers at a construction site;

(ii) the storage for five or fewer days of waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use; or

(iii) the storage of a waste tire before the tire is:

(A) resold wholesale or retail; or

(B) recapped.

(24) (a) "Store" means to place waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Store" does not include:

(i) to use waste tires as ballast to maintain covers on agricultural materials or to maintain covers at a construction site; or

(ii) to store for five or fewer days waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use.

(25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.

(26) "Tire retailer" means any person engaged in the business of selling new tires either as replacement tires or as part of a new vehicle sale.

(27) (a) "Ultimate product" means a product that has as a component materials derived from waste tires and that the director finds has a demonstrated market.

(b) "Ultimate product" includes pyrolyzed materials derived from:

(i) waste tires; or

(ii) chipped tires.

(c) "Ultimate product" does not include a product regarding which a waste tire remains after the product is disposed of or disassembled.

(28) "Waste tire" means:

(a) a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect; or

(b) a tire that a tire retailer removes from a vehicle for replacement with a new or used tire.

(29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

(30) (a) "Waste tire transporter" means a person or entity engaged in picking up or transporting at one time more than 10 whole waste tires, or the equivalent amount of material derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.

(b) "Waste tire transporter" includes any person engaged in the business of collecting, hauling, or transporting waste tires or who performs these functions for another person, except as provided in Subsection (30)(c).

(c) "Waste tire transporter" does not include:

(i) a person transporting waste tires generated solely by:

(A) that person's personal vehicles;

(B) a commercial vehicle fleet owned or operated by that person or that person's employer;

(C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or operated by that person or that person's employer; or

(D) a retail tire business owned or operated by that person or that person's employer;

(ii) a solid waste collector operating under a license issued by a unit of local government as defined in Section 63M-5-103, or a local health department;

(iii) a recycler of waste tires;

(iv) a person transporting tires by rail as a common carrier subject to federal regulation; or

(v) a person transporting processed or chipped tires.

Amended by Chapter 263, 2012 General Session

Amended by Chapter 360, 2012 General Session

19-6-804. Restrictions on disposal and transfer of tires -- Penalties.

(1) (a) An individual, including a waste tire transporter, may not dispose of more than

four whole tires at one time in a landfill or any other location in the state authorized by the director to receive waste tires, except for purposes authorized by board rule.

(b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter greater than 24.5 inches.

(c) No person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this part or rules made under this part.

(2) The operator of the landfill or other authorized location shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires.

(3) An individual, including a waste tire transporter, may dispose of shredded waste tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement, dispose in a landfill materials derived from waste tires that do not qualify for reimbursement under Section 19-6-812, but the landfill shall dispose of the material in accordance with Section 19-6-812.

(4) A tire retailer may only transfer ownership of a waste tire described in Subsection 19-6-803(28)(b) to:

(a) a person who purchases it for the person's own use and not for resale; or

(b) a waste tire transporter that:

(i) is registered in accordance with Section 19-6-806; and

(ii) agrees to transport the tire to:

(A) a tire retailer that sells the tire wholesale or retail; or

(B) a recycler.

(5) (a) An individual, including a waste tire transporter, violating this section is subject to enforcement proceedings and a civil penalty of not more than \$100 per waste tire or per passenger tire equivalent disposed of in violation of this section. A warning notice may be issued prior to taking further enforcement action under this Subsection (5).

(b) A civil proceeding to enforce this section and collect penalties under this section may be brought in the district court where the violation occurred by the director, the local health department, or the county attorney having jurisdiction over the location where the tires were disposed in violation of this section.

(c) Penalties collected under this section shall be deposited in the fund.

Amended by Chapter 263, 2012 General Session

Amended by Chapter 360, 2012 General Session

19-6-805. Recycling fee.

(1) (a) A recycling fee is imposed upon each purchase from a tire retailer of a new tire by a consumer. The fee shall be paid by the consumer to the tire retailer at the time the new tire is purchased.

(b) The recycling fee does not apply to recapped or resold used tires.

(2) The fee for each tire with a rim diameter up to and including 24.5 inches, single or dual bead capacity is \$1.

Amended by Chapter 165, 2001 General Session

19-6-806. Registration of waste tire transporters and recyclers.

(1) (a) The director shall register each applicant for registration to act as a waste tire transporter if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire transporter shall:

(i) submit an application in a form prescribed by the director;

(ii) pay a fee as determined by the board under Section 63J-1-504;

(iii) provide the name and business address of the operator;

(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than \$300,000, for any liability the waste tire transporter may incur in transporting waste tires; and

(v) meet requirements established by board rule.

(c) The holder of a registration under this section shall advise the director in writing of any changes in application information provided to the director within 20 days of the change.

(d) If the director has reason to believe a waste tire transporter has disposed of tires other than as allowed under this part, the director shall conduct an investigation and, after complying with the procedural requirements of Title 63G, Chapter 4, Administrative Procedures Act, may revoke the registration.

(2) (a) The director shall register each applicant for registration to act as a waste tire recycler if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire recycler shall:

(i) submit an application in a form prescribed by the director;

(ii) pay a fee as determined by the board under Section 63J-1-504;

(iii) provide the name and business address of the operator of the recycling business;

(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than \$300,000, for any liability the waste tire recycler may incur in storing and recycling waste tires;

(v) engage in activities as described under the definition of recycler in Section 19-6-803; and

(vi) meet requirements established by board rule.

(c) The holder of a registration under this section shall advise the director in writing of any changes in application information provided to the director within 20 days of the change.

(d) If the director has reason to believe a waste tire recycler has falsified any information provided in an application for partial reimbursement under this section, the director shall, after complying with the procedural requirements of Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

(3) The board shall establish a uniform fee for registration which shall be imposed by any unit of local government or local health department that requires a registration fee as part of the registration of waste tire transporters or waste tire recyclers.

Amended by Chapter 360, 2012 General Session

19-6-807. Special revenue fund -- Creation -- Deposits.

(1) There is created an expendable special revenue fund entitled the "Waste Tire Recycling Fund."

(2) The fund shall consist of:

- (a) the proceeds of the fee imposed under Section 19-6-805; and
- (b) penalties collected under this part.
- (3) Money in the fund shall be used for:
 - (a) partial reimbursement of the costs of transporting, processing, recycling, or disposing of waste tires as provided in this part; and
 - (b) payment of administrative costs of local health departments as provided in Section 19-6-817.
- (4) The Legislature may appropriate money from the fund to pay for costs of the Department of Environmental Quality in administering and enforcing this part.

Amended by Chapter 400, 2013 General Session

19-6-808. Payment of recycling fee -- Administrative charge.

- (1) A tire retailer shall pay the recycling fee to the commission:
 - (a) monthly on or before the last day of the month immediately following the last day of the previous month if:
 - (i) the tire retailer is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or
 - (ii) the tire retailer is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or
 - (b) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the tire retailer is required to file a sales and use tax return with the commission quarterly under Section 59-12-108.
- (2) The payment shall be accompanied by a form prescribed by the commission.
- (3) (a) The proceeds of the fee shall be transferred by the commission to the fund for payment of partial reimbursement.
 - (b) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a fee under Section 19-6-805.
- (4) (a) The commission shall administer, collect, and enforce the fee authorized under this part in accordance with the same procedures used in the administration, collection, and enforcement of the state sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1, General Taxation Policies.
 - (b) A tire retailer may retain 2-1/2% of the recycling fee collected under this part for the cost of collecting the fee.
 - (c) The exemptions provided in Section 59-12-104 do not apply to this part.
- (5) The fee imposed by this part is in addition to all other state, county, or municipal fees and taxes imposed on the sale of new tires.

Amended by Chapter 309, 2011 General Session

19-6-809. Partial reimbursement.

- (1) (a) A recycler may submit an application under Section 19-6-813 to the local health department having jurisdiction over the applicant's business address for partial reimbursement for the cost of transporting and processing a waste tire or a material derived from a waste tire that:
 - (i) meets the requirements of Subsections (3) and (4); and

- (ii) is used within the state for:
 - (A) energy recovery or production;
 - (B) the creation of an ultimate product;
 - (C) the production of crumb rubber, if a contract exists for the sale of the crumb rubber for use, either within or outside the state, as a component in an ultimate product;
 - (D) the production of a chipped tire, if:
 - (I) the chipped tire is beneficially used, either within or outside the state; and
 - (II) a contract exists for the sale of the chipped tire; or
 - (E) a use defined in rule as recycling.
- (b) A recycler is not eligible to receive partial reimbursement for transportation or processing costs related to the creation of an ultimate product if:
 - (i) the recycler used crumb rubber as a component of the ultimate product; and
 - (ii) the recycler, or another recycler, previously received under this section partial reimbursement for transportation or processing costs related to the production of the crumb rubber.
- (c) A recycler who qualifies under this section for partial reimbursement may waive the reimbursement and request in writing that the reimbursement be paid to a person who:
 - (i) delivers a waste tire or material derived from a waste tire to the recycler; or
 - (ii) processes the waste tire before the recycler receives the waste tire or a material derived from the waste tire for recycling.
- (d) A recycler is not eligible to receive partial reimbursement for transportation or processing costs for baling:
 - (i) whole waste tires; or
 - (ii) materials derived from waste tires that are larger than shredded waste tires.
- (2) Subject to the limitations in Section 19-6-816, a recycler is entitled to:
 - (a) \$65 as partial reimbursement for each ton of waste tires or material derived from waste tires converted to crumb rubber, if a contract exists for the sale of the crumb rubber for use as a component in an ultimate product;
 - (b) \$50 as partial reimbursement for each ton of waste tires or material derived from waste tires recycled, other than as crumb rubber; and
 - (c) \$20 as partial reimbursement for each ton of chipped tires used for a beneficial use.
- (3) (a) A recycler is eligible for a partial reimbursement if the recycler establishes, in cooperation with a tire retailer or transporter, or both, a reasonable schedule to remove waste tires in sufficient quantities to allow for economic transportation of waste tires located in a municipality, as defined in Section 10-1-104, within the state.
- (b) A recycler who is eligible for partial reimbursement under Subsection (3)(a) may also receive partial reimbursement for recycling a tire received from a location within the state other than those associated with a retail tire business, including a waste tire from a waste tire pile or an abandoned waste tire pile, as provided by Section 19-6-810.
- (4) A recycler who applies for partial reimbursement under Subsection (1) shall demonstrate to the local health department identified in Subsection (1)(a) that:
 - (a) the waste tire or material derived from a waste tire that qualifies for the reimbursement was:
 - (i) (A) removed and transported by a registered waste tire transporter, a recycler, or a tire retailer; or

- (B) generated by a private person who:
 - (I) is not a waste tire transporter as defined in Section 19-6-803; and
 - (II) brings the waste tire to the recycler; and
- (ii) generated in the state; and
- (b) if the tire is from a waste tire pile or abandoned waste tire pile, the recycler complied with the requirements of Section 19-6-810.

Amended by Chapter 263, 2012 General Session

19-6-810. Recycling waste tires from abandoned waste tire piles and other waste tire piles.

(1) A recycler may be reimbursed for recycling or beneficial use of waste tires from an abandoned waste tire pile within the state if:

(a) prior to recycling or the beneficial use of any of the waste tires, the recycler receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating:

- (i) the waste tire pile is abandoned; and
- (ii) the local health department has not been able to:
 - (A) locate the persons responsible for the waste tire pile; or
 - (B) cause the persons responsible for the waste tire pile to remove it;
- (b) the waste tire transporter who transports the waste tires to the recycler:
 - (i) is registered;
 - (ii) has received from the local health department an affidavit stating it has authorized the transporter to remove the waste tires and deliver them to a recycler; and
- (iii) provides a copy of the affidavit to the recycler; and
- (c) the recycler provides to the local health department:
 - (i) proof of compliance with this Subsection (1) in the required form; and
 - (ii) the information required under Section 19-6-809.

(2) A recycler may receive partial reimbursement for recycling or the beneficial use of waste tires from waste tire piles within the state that are not abandoned if:

(a) prior to recycling or the beneficial use of any of the waste tires, the recycler receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating the waste tire pile is not abandoned;

(b) the recycler obtains an affidavit from the owner of the waste tire pile or the owner's authorized designee stating:

- (i) the waste tires are from a pile to which no tires have been added after June 30, 1991;
- or

(ii) if the waste tires are from a waste tire pile to which waste tires have been added after June 30, 1991, all the waste tires provided to the recycler were generated within the state;

(c) the waste tires are transported to the recycler by a registered waste tire transporter, who provides a manifest to the recycler; and

(d) the recycler provides to the local health department:

- (i) proof of compliance with this Subsection (2) in the required form; and
- (ii) the information required under Section 19-6-809.

**19-6-811. Funding for management of certain landfill or abandoned waste tire piles
-- Limitations.**

(1) (a) A county or municipality may apply to the director for payment from the fund for costs of a waste tire transporter or recycler to remove waste tires from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local governmental entity and deliver the waste tires to a recycler.

(b) The director may authorize a maximum reimbursement of:

(i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001; or

(ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001.

(c) The director may deny an application for payment of waste tire pile removal and delivery costs, if the director determines that payment of the costs will result in there not being sufficient money in the fund to pay expected reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.

(2) (a) The maximum number of miles for which the director may reimburse for transportation costs incurred by a waste tire transporter under this section, is the number of miles, one way, between the location of the waste tire pile and the State Capitol Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

(b) This maximum number of miles available for reimbursement applies regardless of the location of the recycler to which the waste tires are transported under this section.

(c) The director shall, upon request, advise any person preparing a bid under this section of the maximum number of miles available for reimbursement under this Subsection (2).

(d) The cost under this Subsection (2) shall be calculated based on the cost to transport one ton of waste tires one mile.

(3) (a) The county or municipality shall through a competitive bidding process make a good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile and transport to a recycler.

(b) The county or municipality shall submit to the director:

(i) (A) a statement from the local health department stating the landfill waste tire pile is operated by a state or local governmental entity and consists solely of waste tires diverted from the landfill waste stream;

(II) a description of the size and location of the landfill waste tire pile; and

(III) landfill records showing the origin of the waste tires; or

(B) a statement from the local health department that the waste tire pile is abandoned;

and

(ii) (A) the bid selected by the county or municipality; or

(B) if no bids were received, a statement to that fact.

(4) (a) If a bid is submitted, the director shall determine if the bid is reasonable, taking

into consideration:

- (i) the location and size of the landfill or abandoned waste tire pile;
 - (ii) the number and size of any other landfill or abandoned waste tire piles in the area;
- and
- (iii) the current market for waste tires of the type in the landfill or abandoned waste tire pile.

(b) The director shall advise the county or municipality within 30 days of receipt of the bid whether or not the bid is determined to be reasonable.

(5) (a) If the bid is found to be reasonable, the county or municipality may proceed to have the landfill or abandoned waste tire pile removed pursuant to the bid.

(b) The county or municipality shall advise the director that the landfill or abandoned waste tire pile has been removed.

(6) The recycler or waste tire transporter that removed the landfill or abandoned waste tires pursuant to the bid shall submit to the director a copy of the manifest, which shall state:

- (a) the number or tons of waste tires transported;
- (b) the location from which they were removed;
- (c) the recycler to which the waste tires were delivered; and
- (d) the amount charged by the transporter or recycler.

(7) Upon receipt of the information required under Subsection (6), and determination that the information is complete, the director shall, within 30 days after receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the amount established under this section.

Amended by Chapter 360, 2012 General Session

19-6-812. Landfilling shredded tires -- Reimbursement.

(1) A waste tire may be disposed of in a landfill if:

- (a) the land fill is operated in compliance with the requirements of Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;
- (b) the waste tire is shredded; and
- (c) the waste tire is stored in a segregated cell or other landfill facility that ensures that the disposed shredded waste tire is in a clean and accessible condition so that the waste tire may be reasonably retrieved and recycled at a future time.

(2) The owner or operator of a landfill may apply to the local health department having jurisdiction over the applicant's business address for reimbursement of \$20 per ton of waste tires placed in the landfill if:

- (a) the waste tires are disposed in compliance with Subsection (1);
- (b) the waste tires are generated from within the state; and
- (c) the application includes:
 - (i) the site from which the waste tires are removed;
 - (ii) the landfill where the waste tires are disposed; and
 - (iii) the amount of shredded tires disposed.

(3) An application for reimbursement under this section is substantially the same as the application process required of recyclers applying for partial reimbursement under Section 19-6-813.

(4) A waste tire, for which reimbursement is paid under this section, is not eligible for additional reimbursement under this part.

Amended by Chapter 66, 2008 General Session

19-6-813. Application for partial reimbursement -- Penalty.

(1) An application for partial reimbursement shall be in the format prescribed by the local health department and shall include:

- (a) the recycler's name and a brief description of the recycler's business;
- (b) the quantity, in tons, of waste tires recycled or used in a beneficial use;
- (c) originals or copies of log books, receipts, bills of lading, or other similar documents to establish the tonnage of waste tires recycled or used in a beneficial use;
- (d) a description of how the waste tires were recycled;
- (e) proof that is satisfactory to the local health department that the waste tires were recycled or used in a beneficial use; and
- (f) the affidavit of the recycler warranting that the recycled waste tires or waste tires used for a beneficial use for which reimbursement is sought meet the requirements of Subsection 19-6-809(4).

(2) In addition to any other penalty imposed under Section 19-6-821 or 19-6-822 or by any other law, any person who knowingly or intentionally provides false information to the local health department under Subsection (1):

- (a) is ineligible to receive any further reimbursement under this part; and
- (b) shall return to the Division of Finance any reimbursement previously received for deposit in the fund.

Amended by Chapter 256, 2002 General Session

19-6-814. Local health department responsibility.

(1) A local health department that has received an application for partial reimbursement from a recycler shall within 15 calendar days after receiving the application:

- (a) review the application for completeness;
- (b) conduct an on-site investigation of the recycler's waste tire use if the application is the initial application of the recycler; and
- (c) submit the recycler's application for partial reimbursement together with a brief written report of the results of the investigation and the dollar amount approved for payment to the Division of Finance.

(2) If the local health department approves a dollar amount for partial reimbursement which is less than the amount requested by the recycler, the local health department shall submit its written report of the investigation and recommendation to the recycler at least five days prior to submitting the report and recommendation to the Division of Finance.

Amended by Chapter 297, 2011 General Session

19-6-815. Payment by Division of Finance.

(1) The Division of Finance is authorized to pay the recycler partial reimbursements

described in Section 19-6-809 from the fund.

(2) The Division of Finance shall pay the dollar amount of partial reimbursement approved by the local health department to the recycler within the next payment period established by rule of the Division of Finance, after receipt of the local health department's report and recommendation.

Amended by Chapter 256, 2002 General Session

19-6-816. Limitations on reimbursement.

(1) The costs reimbursed under this part may not exceed the money in the fund.

(2) If applications for reimbursement under Section 19-6-809, 19-6-811, or 19-6-812 during any month exceed the money in the fund, the Division of Finance shall prorate the amount of all claims for reimbursement for the month and defer payment of the remainder.

(3) The amount remaining unpaid on a claim for reimbursement shall be treated as a new application for reimbursement in the next succeeding month until the unpaid amount is \$500 or less, at which time the balance of the claim shall be paid in full.

Amended by Chapter 256, 2002 General Session

19-6-817. Administrative fees to local health departments -- Reporting by local health departments.

(1) (a) The Division of Finance shall pay quarterly to the local health departments from the fund \$5 per ton of tires for which a partial reimbursement is made under this part.

(b) The payment under Subsection (1)(a) shall be allocated among the local health departments in accordance with recommendations of the Utah Association of Local Health Officers.

(c) The recommendation shall be based on the efforts expended and the costs incurred by the local health departments in enforcing this part and rules made under this part.

(2) (a) Each local health department shall track all waste tires removed from abandoned waste tire piles within its jurisdiction, to determine the amount of waste tires removed and the recycler to which they are transported.

(b) The local health department shall report this information quarterly to the director.

Amended by Chapter 360, 2012 General Session

19-6-818. Local health department rules.

(1) In accordance with Section 26A-1-121, the local health department shall make regulations to:

(a) develop an application form; and

(b) establish the procedure to apply for reimbursement.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to implement this part.

(3) The local health departments shall take into consideration the removal schedule of tire transporters or recyclers in a geographical area when making regulations governing the storage of waste tires at any business that generates waste tires, pending removal of those waste

tires for recycling.

Amended by Chapter 382, 2008 General Session

19-6-819. Powers and duties of the board.

(1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part. For these purposes the board shall establish by rule:

(a) conditions and procedures for acting to issue or revoke a registration as a waste tire recycler or transporter under Section 19-6-806;

(b) the amount of liability insurance or other financial responsibility the applicant is required to have to qualify for registration under Section 19-6-806, which amount may not be more than \$300,000 for any liability the waste tire transporter or recycler may incur in recycling or transporting waste tires;

(c) the form and amount of financial assurance required for a site or facility used to store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste tires from that site or facility;

(d) standards and required documentation for tracking and record keeping of waste tires subject to regulation under this part, including:

(i) manifests for handling and transferring waste tires;

(ii) records documenting date, quantities, and size or type of waste tires transported, processed, transferred, or sold;

(iii) records documenting persons between whom transactions under this Subsection (1)(d) occurred and the amounts of waste tires involved in those transactions; and

(iv) requiring that documentation under this Subsection (1)(d) be submitted on a quarterly basis, and that this documentation be made available for public inspection;

(e) authorize inspections and audits of waste tire recycling, transportation, or storage facilities and operations subject to this part;

(f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811, and 19-6-812;

(g) regarding applications to the director for reimbursements under Section 19-6-811, the content of the reimbursement application form and the procedure to apply for reimbursement;

(h) requirements for the storage of waste tires, including permits for storage;

(i) the types of energy recovery or other appropriate environmentally compatible uses eligible for reimbursement, which:

(i) shall include pyrolyzation, but not retreading; and

(ii) shall apply to all waste tire recycling and beneficial use reimbursements within the state;

(j) the applications of waste tires that are not eligible for reimbursement;

(k) the applications of waste tires that are considered to be the storage or disposal of waste tires; and

(l) provisions governing the storage or disposal of waste tires, including the process for issuing permits for waste tire storage sites.

(2) The board may:

(a) require retention and submission of the records required under this part;

(b) require audits of the records and record keeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the commission; and

(c) as necessary, make rules requiring additional information as the board determines necessary to effectively administer Section 19-6-812, which rules may not place an undue burden on the operation of landfills.

Amended by Chapter 360, 2012 General Session

19-6-820. Powers and duties of the director.

(1) The director shall:

- (a) administer and enforce the rules and orders of the board;
- (b) issue and revoke registrations for waste tire recyclers and transporters; and
- (c) require forms, analyses, documents, maps, and other records as the director finds

necessary to:

- (i) issue recycler and transporter registrations;
- (ii) authorize reimbursements under Section 19-6-811;
- (iii) inspect a site, facility, or activity regulated under this part; and
- (iv) issue permits for and inspect waste tire storage sites.

(2) The director may:

(a) authorize any division employee to enter any site or facility regulated under this part at reasonable times and upon presentation of credentials, for the purpose of inspection, audit, or sampling:

- (i) at the site or facility; or
- (ii) of the records, operations, or products;

(b) as authorized by the board, enforce board rules by issuing orders which are subsequently subject to the board's amendment or revocation; and

(c) coordinate with federal, state, and local governments, and other agencies, including entering into memoranda of understanding, to:

- (i) ensure effective regulation of waste tires under this part;
- (ii) minimize duplication of regulation; and
- (iii) encourage responsible recycling of waste tires.

Amended by Chapter 360, 2012 General Session

19-6-821. Violations -- Civil proceedings and penalties -- Orders.

(1) A person who violates any provision of this part or any order, permit, plan approval, or rule issued or adopted under this part is subject to a civil penalty of not more than \$10,000 per day for each day of violation as determined in a civil hearing under Title 63G, Chapter 4, Administrative Procedures Act, except:

(a) any violation of Subsection 19-6-804(1), (3), or (4) is subject to the penalty under Subsection 19-6-804(5) rather than the penalties under this section; and

(b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4)

rather than the penalties under this section.

(2) The director may bring an action in the name of the state to restrain a person from continuing a violation of this part and to require the person to perform necessary remediation regarding a violation of this part.

(3) When the director finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures Act.

(4) The director may revoke the registration of a waste tire recycler or transporter who violates any provision of this part or any order, plan approval, permit, or rule issued or adopted under this part.

(5) The director may revoke the tire storage permit for a storage facility that is in violation of any provision of this part or any order, plan approval, permit, or rule issued or adopted under this part.

(6) If a person has been convicted of violating a provision of this part prior to a finding by the director of a violation of the same provision in an administrative hearing, the director may not assess a civil monetary penalty under this section for the same offense for which the conviction was obtained.

(7) All penalties collected under this section shall be deposited in the fund.

Amended by Chapter 263, 2012 General Session

Amended by Chapter 360, 2012 General Session

19-6-822. Criminal penalties.

A person is guilty of a third degree felony if the person knowingly or intentionally provides or submits false information under the following provisions:

- (1) Subsection 19-6-809(1)(a);
- (2) Subsection 19-6-809(1)(c);
- (3) Subsection 19-6-809(4);
- (4) Subsection 19-6-810(1)(c);
- (5) Subsection 19-6-810(2)(d);
- (6) Subsection 19-6-811(3)(b);
- (7) Subsection 19-6-811(6);
- (8) Subsection 19-6-812(2); or
- (9) Subsection 19-6-813(1).

Repealed and Re-enacted by Chapter 263, 2012 General Session

19-6-823. Exception.

The provisions of this part do not apply to waste tires from any device moved exclusively by human power.

Renumbered and Amended by Chapter 51, 2000 General Session

19-6-901. Title.

This part is known as the "Illegal Drug Operations Site Reporting and Decontamination

Act."

Enacted by Chapter 249, 2004 General Session

19-6-902. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board, as defined in Section 19-1-106, within the Department of Environmental Quality.

(2) "Certified decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has been certified by the board under Subsection 19-6-906(2).

(3) "Contaminated" or "contamination" means:

(a) polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards; or

(b) that a property is polluted by hazardous materials as a result of the use, production, or presence of methamphetamine in excess of decontamination standards adopted by the Department of Health under Section 26-51-201.

(4) "Contamination list" means a list maintained by the local health department of properties:

(a) reported to the local health department under Section 19-6-903; and

(b) determined by the local health department to be contaminated.

(5) (a) "Decontaminated" means property that at one time was contaminated, but the contaminants have been removed.

(b) "Decontaminated" for a property that was contaminated by the use, production, or presence of methamphetamine means that the property satisfies decontamination standards adopted by the Department of Health under Section 26-51-201.

(6) "Hazardous materials":

(a) has the same meaning as "hazardous or dangerous material" as defined in Section 58-37d-3; and

(b) includes any illegally manufactured controlled substances.

(7) "Health department" means a local health department under Title 26A, Local Health Authorities.

(8) "Owner of record":

(a) means the owner of real property as shown on the records of the county recorder in the county where the property is located; and

(b) may include an individual, financial institution, company, corporation, or other entity.

(9) "Property":

(a) means any real property, site, structure, part of a structure, or the grounds surrounding a structure; and

(b) includes single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(10) "Reported property" means property that is the subject of a law enforcement report under Section 19-6-903.

Amended by Chapter 278, 2013 General Session

19-6-903. Law enforcement reporting and records -- Removal from list.

(1) (a) When any state or local law enforcement agency in the course of its official duties observes any paraphernalia of a clandestine drug laboratory operation, including chemicals or equipment used in the manufacture of unlawful drugs, the agency shall report the location where the items were observed to the local health department.

(b) (i) The law enforcement officer shall make the report under Subsection (1)(a) at the location where the observation occurred, if making the report at that time will not compromise an ongoing investigation.

(ii) If the report cannot be made at the location, the report shall be made as soon afterward as is practical.

(c) The report under Subsection (1)(a) shall include:

(i) the date of the observation;

(ii) the name of the reporting agency and the case number of the case that involves the location of the observation;

(iii) the contact information of the officer involved, including name and telephone number;

(iv) the address of the location and descriptions of the property that may be contaminated; and

(v) a brief description of the evidence at the location that led to the belief the property at the location may be contaminated.

(2) The law enforcement agency shall forward to the local health department copies of the reports made under Subsection (1).

(3) (a) Upon receipt of a complaint or a report from law enforcement regarding possibly contaminated property, the local health officer or his designee shall determine if reasonable evidence exists that the property is contaminated.

(b) The local health department shall place property considered to be contaminated on a contamination list.

(4) The local health departments shall maintain searchable records of the properties on their contamination lists and shall:

(a) make the records reasonably available to the public;

(b) provide written notification to persons requesting access to the records that the records are only advisory in determining if specific property has been contaminated by clandestine drug lab activity; and

(c) remove the contaminated property from the list when the following conditions have been met:

(i) the local health department has monitored the decontamination process and, after documenting that the test results meet decontamination standards, has authorized the removal of or purging of the contamination information from the department's records; or

(ii) a certified decontamination specialist submits a report to the local health department stating that the property is decontaminated.

Enacted by Chapter 249, 2004 General Session

19-6-904. Decontamination specialist reporting to local health departments.

(1) A certified decontamination specialist is required to report to the local health department the location of any property that is the subject of decontamination work by that decontamination specialist. The report shall be submitted prior to commencement of the decontamination work.

(2) The report under Subsection (1) shall include:

(a) sufficient information to allow the local health department to investigate and verify the location of the property, including the address and description of the property; and
(b) a proposed work plan for decontaminating the property.

(3) Upon completion of the decontamination process, a report certifying that the property is decontaminated shall be submitted to the local health department within 30 days.

Enacted by Chapter 249, 2004 General Session

19-6-905. Notification of property owner -- Notification of municipality or county.

(1) (a) If the local health department determines a property is contaminated, it shall notify the owner of record that the property has been placed on the contamination list and shall provide to the owner information regarding remediation options and the requirements necessary to clean up the property, obtain certification that the property is decontaminated, and remove the property from the contamination list.

(b) The notification shall include a deadline for the owner to provide to the local health department information on how the owner plans to address the contamination.

(c) This part does not require that decontamination be conducted by a certified decontamination specialist. However, upon completion of the decontamination, the property must be determined to be decontaminated in accordance with Subsection 19-6-903(4)(c) in order to be removed from the contamination list.

(2) If the local health department does not receive a response from the owner of record within the time period specified in the notice, or the owner of record advises the local health department that the owner does not intend to take action or that the reported property will be abandoned, the local health department shall notify the municipality in which the reported property is located, or the county, if the location is in an unincorporated area, of the owner of record's response or lack of response.

Enacted by Chapter 249, 2004 General Session

19-6-906. Decontamination standards -- Specialist certification standards -- Rulemaking.

(1) The Department of Health shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with the local health departments and the Department of Environmental Quality, to establish:

(a) decontamination and sampling standards and best management practices for the inspection and decontamination of property and the disposal of contaminated debris under this part;

(b) appropriate methods for the testing of buildings and interior surfaces, and furnishings, soil, and septic tanks for contamination; and

(c) when testing for contamination may be required.

(2) The Department of Environmental Quality Solid and Hazardous Waste Control Board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with the Department of Health and local health departments, to establish within the Department of Environmental Quality Division of Environmental Response and Remediation:

(a) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(b) a process for revoking the certification of a decontamination specialist who fails to maintain the certification standards.

(3) All rules made under this part shall be consistent with other state and federal requirements.

(4) The board has authority to enforce the provisions under Subsection (2).

Amended by Chapter 382, 2008 General Session

19-6-1001. Title.

This part is known as the "Mercury Switch Removal Act."

Enacted by Chapter 187, 2006 General Session

19-6-1002. Definitions.

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Director" means the director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

(4) "Manufacturer" means the last person in the production or assembly process of a vehicle.

(5) "Mercury switch" means a mercury-containing capsule that is part of a convenience light switch assembly installed in a vehicle's hood or trunk.

(6) "Person" means an individual, a firm, an association, a partnership, a corporation, the state, or a local government.

(7) "Plan" means a plan for removing and collecting mercury switches from vehicles.

(8) "Vehicle" means any passenger automobile or car, station wagon, truck, van, or sport utility vehicle that may contain one or more mercury switches.

Amended by Chapter 360, 2012 General Session

19-6-1003. Board and director powers.

(1) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules:

(a) governing administrative proceedings under this part;

(b) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and

(c) governing reports and educational materials required by this part.

- (2) These rules shall include:
 - (a) time requirements for plan submission, review, approval, and implementation;
 - (b) a public notice and comment period for a proposed plan; and
 - (c) safety standards for the collection, packaging, transportation, storage, recycling, and disposal of mercury switches.
- (3) The director may:
 - (a) review and approve or disapprove plans, specifications, or other data related to mercury switch removal;
 - (b) enforce a rule by issuing a notice, an order, or both;
 - (c) initiate an administrative action to compel compliance with this part and any rules adopted under this part; or
 - (d) request the attorney general to bring an action for injunctive relief and enforcement of this part, including imposition of the penalty described in Section 19-6-1006.
- (4) The director shall establish a fee to cover the costs of a plan's review by following the procedures and requirements of Section 63J-1-504.

Amended by Chapter 360, 2012 General Session

19-6-1004. Mercury switch collection plan -- Reimbursement for mercury switch removal.

- (1) (a) Each manufacturer of any vehicle sold within this state, individually or in cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the director.
- (b) If the director disapproves a plan, the manufacturer shall submit an amended plan within 90 days.
- (c) A manufacturer shall submit an updated plan within 90 days of any change in the information required by Subsection (2).
- (d) The director may require the manufacturer to modify the plan at any time upon finding that an approved plan as implemented has failed to meet the requirements of this part.
- (e) If the manufacturer does not know or is uncertain about whether or not a switch contains mercury, the plan shall presume that the switch contains mercury.
- (2) The plan shall include:
 - (a) the make, model, and year of any vehicle, including current and anticipated future production models, sold by the manufacturer that may contain one or more mercury switches;
 - (b) the description and location of each mercury switch for each make, model, and year of vehicle;
 - (c) education materials that include:
 - (i) safe and environmentally sound methods for mercury switch removal; and
 - (ii) information about hazards related to mercury and the proper handling of mercury;
 - (d) a method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to an authorized recycling, storage, or disposal facility;
 - (e) a procedure for the transfer of information among persons involved with the plan to comply with reporting requirements; and
 - (f) a method to implement and finance the plan, which shall include the prompt reimbursement by the manufacturer of costs incurred by a person removing and collecting mercury switches.

(3) In order to ensure that the costs of removal and collection of mercury switches are not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

- (a) a minimum of \$5 for each mercury switch removed by a person as partial compensation for the labor and other costs incurred in removing the mercury switch;
- (b) the cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities;
- (c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;
- (d) the cost of recycling, storage, or disposal of mercury switches;
- (e) the cost of the preparation and distribution of educational materials; and
- (f) the cost of maintaining all appropriate record-keeping systems.

(4) Manufacturers of vehicles sold within this state shall reimburse a person for each mercury switch removed and collected without regard to the date on which the mercury switch is removed and collected.

(5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

Amended by Chapter 360, 2012 General Session

19-6-1005. Reporting requirements.

(1) Each manufacturer that is required to implement a plan shall submit, either individually or in cooperation with other manufacturers, an annual report on the plan's implementation to the director within 90 days after the anniversary of the date on which the manufacturer is required to begin plan implementation.

(2) The report shall include:

- (a) the number of mercury switches collected;
- (b) the number of mercury switches for which the manufacturer has provided reimbursement;
- (c) a description of the successes and failures of the plan; and
- (d) a statement that details the costs required to implement the plan.

Amended by Chapter 360, 2012 General Session

19-6-1006. Penalties.

A manufacturer who fails to submit, modify, or implement a plan according to this part and rules enacted under this part is subject to a civil penalty of not more than \$1,000 per day per violation as determined in an administrative proceeding conducted according to the board's rules.

Enacted by Chapter 187, 2006 General Session

19-6-1101. Title.

This part is known as "Industrial Byproduct Reuse."

Enacted by Chapter 340, 2009 General Session

19-6-1102. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created under Section 19-1-106.

(2) "Director" means the director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

(4) (a) "Industrial byproduct" means an industrial residual, including:

(i) inert construction debris;

(ii) fly ash;

(iii) bottom ash;

(iv) slag;

(v) flue gas emission control residuals generated primarily from the combustion of coal or other fossil fuel;

(vi) residual from the extraction, beneficiation, and processing of an ore or mineral;

(vii) cement kiln dust; or

(viii) contaminated soil extracted as a result of a corrective action subject to an operation plan under Part 1, Solid and Hazardous Waste Act.

(b) "Industrial byproduct" does not include material that:

(i) causes a public nuisance or public health hazard; or

(ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.

(5) "Public project" means a project of the Department of Transportation to construct:

(a) a highway or road;

(b) a curb;

(c) a gutter;

(d) a walkway;

(e) a parking facility;

(f) a public transportation facility; or

(g) a facility, infrastructure, or transportation improvement that benefits the public.

(6) "Reuse" means to use an industrial byproduct in place of a raw material.

Amended by Chapter 360, 2012 General Session

19-6-1103. Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to implement this part, including:

(1) a streamlined application procedure designed to encourage and allow reuse of an industrial byproduct in a public project; and

(2) reasonable, objective standards for demonstrating, without regard to the industrial byproduct's source, the safety of the reuse and future reuse of an industrial byproduct.

Enacted by Chapter 340, 2009 General Session

19-6-1104. Applications for industrial byproduct reuse -- Approval by the director.

(1) A person may submit to the director an application for reuse of an industrial byproduct from an inactive industrial site, as defined in Section 17C-1-102.

(2) The director shall respond to an application submitted under Subsection (1) within 60

days of the day on which the director determines the application is complete.

(3) The director shall approve an application submitted under Subsection (1) if the applicant shows:

- (a) the industrial byproduct meets the applicable health risk standard;
- (b) the industrial byproduct satisfies the applicable toxicity characteristic leaching procedure; and
- (c) the proposed method of installation and type of reuse meet the applicable health risk standard.

Amended by Chapter 360, 2012 General Session

19-6-1201. Title.

This part is known as the "Disposal of Electronic Waste Program."

Enacted by Chapter 213, 2011 General Session

19-6-1202. Definitions.

As used in this part:

- (1) "Collection":
 - (a) means the aggregation of consumer electronic devices from consumers; and
 - (b) includes all the activities up to the time a consumer electronic device is delivered to a recycler.
- (2) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing a logical, arithmetic, or storage function, including:
 - (i) a laptop computer;
 - (ii) a desktop computer; or
 - (iii) a tablet computer.
- (b) "Computer" includes the following permanently affixed to or incorporated into a device described in Subsection (2)(a):
 - (i) a cable cord;
 - (ii) permanent wiring;
 - (iii) a central processing unit; or
 - (iv) a monitor.
- (c) "Computer" does not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, a server, or similar device.
- (3) "Consumer" means a person who owns or uses a covered electronic device that is purchased primarily for personal or home business use.
- (4) "Consumer electronic device" means the following products sold to a consumer:
 - (a) a computer;
 - (b) a computer peripheral;
 - (c) a television; or
 - (d) a television peripheral.
- (5) "Eligible program" means a collection, reuse, or recycling system for a consumer electronic device, including:

- (a) a system by which a manufacturer, manufacturer's designee, or other private entity offers a consumer an option to return a consumer electronic device by mail;
 - (b) a system using a physical collection site that a manufacturer, manufacturer's designee, or other private or public entity provides for a consumer to return a covered consumer electronic device; or
 - (c) a system that uses a collection event held by a manufacturer, manufacturer's designee, or other private or public entity at which a consumer may return a consumer electronic device.
- (6) "Manufacturer" means a person who:
- (a) manufactures a consumer electronic device under a brand the person owns or is licensed to use; or
 - (b) assumes the responsibilities and obligations of a person described in Subsection (6)(a).
- (7) "Peripheral" means a keyboard, printer, or other device that:
- (a) is sold exclusively for external use with a television or computer; and
 - (b) provides input into or output from a television or computer.
- (8) (a) "Recycling" means the process of collecting and preparing electronic products for:
- (i) use in a manufacturing process; or
 - (ii) recovery of reusable materials followed by delivery of reusable materials for use.
- (b) "Recycling" does not include destruction by incineration, waste-to-energy incineration, or other similar processes or land disposal.
- (9) "Reuse" means electronic waste:
- (a) that is tested and determined to be in good working order; and
 - (b) that is removed from the waste stream to use for the same purpose for which it was manufactured, including the continued use of the whole system or components.
- (10) (a) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a consumer electronic device to a consumer.
- (b) "Sell" or "sale" does not include:
- (i) the sale, resale, lease, or transfer of used consumer electronic devices; or
 - (ii) a manufacturer's or a distributor's wholesale transaction with a distributor or retailer involving a consumer electronic device.
- (11) "Television" means a display system primarily intended to receive video programming via broadcast, cable, or satellite transmission.

Enacted by Chapter 213, 2011 General Session

19-6-1203. Reporting requirements.

- (1) On or after July 1, 2011, a manufacturer may not offer a consumer electronic device for sale in the state unless the manufacturer, either individually, through a group manufacturer organization, or through the manufacturer's industry trade group, prepares and submits, subject to Subsection (2), a report on or before August 1 of each year to the department.
- (2) The report required under Subsection (1):
 - (a) shall include a list of eligible programs, subject to Subsection (3); and
 - (b) may include:
 - (i) an existing collection, transportation, or recycling system for a consumer electronic device; and

- (ii) an eligible program offered by:
 - (A) a consumer electronic device recycler;
 - (B) a consumer electronic device repair shop;
 - (C) a recycler of other commodities;
 - (D) a reuse organization;
 - (E) a not-for-profit corporation;
 - (F) a retailer; or
 - (G) another similar operation, including a local government collection event.
- (3) The list required in Subsection (2)(a) may be in the form of a geographic map identifying the type and location of an eligible program.
- (4) The department shall:
 - (a) compile the report required under Subsection (1); and
 - (b) beginning on October 31, 2012, submit annually on or before October 31 the compiled report to the Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee.

Enacted by Chapter 213, 2011 General Session

19-6-1204. Public education program.

- (1) Effective January 1, 2012, a manufacturer may not offer a consumer electronic device for sale in the state unless the manufacturer individually, through a group manufacturer organization, or through the manufacturer's industry trade group establishes and implements, in accordance with Subsection (2), a public education program regarding the eligible programs.
- (2) (a) The public education program required under Subsection (1) shall:
 - (i) inform a consumer about eligible programs; and
 - (ii) use manufacturer-developed customer outreach materials, such as packaging inserts, company websites, and other communication methods, to inform a consumer about eligible programs.
- (b) A manufacturer described in Subsection (1) shall work with the department and other interested parties to develop educational materials that inform consumers about an eligible program.

Enacted by Chapter 213, 2011 General Session

19-6-1205. Local government arrangement.

If a local government enters into an arrangement with a manufacturer to facilitate consumer electronics recycling in accordance with this part, the local government may enter into the arrangement without requiring a request for proposal or similar competitive procurement process required by law.

Enacted by Chapter 213, 2011 General Session